APPENDIX

IN THE

Supreme Court of the United States

TERM, 1971

No. 71-119

MIKE TRBOVICH,

Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITION FOR CERTIORARI FILED JULY 23, 1971
CERTIORARI GRANTED OCTOBER 19, 1971

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

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IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

GEORGE P. SHULTZ, Secretary of Labor United States Department of Labor, *Plaintiff,*	)	
v.	)	CIVIL ACTION FILE NO. 662-70
UNITED MINE WORKERS OF AMERICA, *Defendant.*	)	

DOCKET ENTRIES

1970

March 5	Complaint, filed.
5	Summons and Complaint issued; served 3/18/70.
5	Motion for preliminary injunction, affidavits and exhibits, filed.
6	Memorandum in support of motion for preliminary injunction, filed.
18	Appearance of Edward L. Carey, Harrison Combs, Willard P. Owens, Charles Widman and Walter Gillcrist for deft., filed.

	18	Interrogatories of deft. to pltf., filed.
	18	Motion of deft. for extension of time to file opposition to motion for preliminary injunction, affidavit, filed.
	30	Objections of pltf. to interrogatories, filed.
	30	Response of pltf. to deft.'s motion for extension to respond to motion for preliminary injunction, filed.
	30	Order extending time for deft. to file opposition to motion for preliminary injunction until May 1, 1970.
April	2	Motion of pltf. for additional time to answer interrogatories, filed.
	7	Motion of deft. for extension of time to file answer or otherwise plead.
	7	Appearance of Carey, Combs, Owens, Widman and Gillcrist, filed.
	7	Response of deft. to pltf.'s motion for extension of time to answer interrogatories.
	8	Answer of pltf. to deft.'s interrogatories, Exhibits A-H, filed.
	9	Motion of deft. for extension of time to file response to pltf.'s objections to interrogatories, filed.
	15	Response of pltf. to deft.'s motion for extension of time within which to file its answer or otherwise plead, filed.

	23	Motion of deft. to quash subpoena duces tecum, exhibit, filed.
	23	Copy of letter to Emmett Thomas from Dept. of Labor, filed.
	24	Order denying deft.'s motion to quash subpoena duces tecum, McGuire, J.
	24	Notice of appeal by deft. from order of 4/26/70; copy mailed to Orlikoff, filed.
	24	Motion of deft. to compel pltf. to answer certain interrogatories, filed.
	27	Record on appeal delivered to USCA.
	27	Receipt by USCA for original record filed, filed.
	30	Transcript of proceedings, 4-3-70; filed.
May	1	Memorandum of law in support of objections to deft.'s interrogatories, filed.
	1	Motion of deft. for extension of time to file opposition to pltf.'s motion for preliminary injunction, filed.
	4	Motion of pltf. for extension of time to respond to deft.'s motion to compel answers to certain interrogatories, filed.
	8	Points and authorities in reply to deft.'s memorandum of law, filed.
	8	Response of pltf. to deft.'s motion for extension of time within which to oppose pltf.'s motion for preliminary injunction, filed.

	12	Motion of pltf. for production of documents, affidavit, filed.
	12	Answer of pltf. to interrogatory, filed.
	13	Case reassigned to Judge Bryant on 5-13-70.
	18	Response of pltf. to motion to compel answers to interrogatories, filed.
	20	Interrogatories of deft. to pltf., filed.
	20	Opposition of deft. to motion for production of documents, affidavit, filed.
	21	Recommendation sustaining and overruling in part pltf.'s objections to interrogatories and allowing pltf. until June 8, 1970, to respond. Pretrial Examiner.
	25	Notice of deft. to take deposition of pltf., filed.
June	1	Objections of pltf. to recommendation of Pretrial Examiner, filed.
	1	Objections of pltf. to deft.'s interrogatory No. 315, filed.
	1	Supplemental answers of pltf. to deft.'s interrogatories, filed.
	2	Certified copy of order of USCA denying motion for summary reversal and granting appellee's motion for summary affirmance and affirming order of April 24, 1970, filed.
	4	Answer of pltf. to interrogatories, filed.
	5	Motion of pltf. for a protective order, or in the alternative, motion to quash, filed.

8 Answer of pltf. to interrogatories.

10 Opposition of deft. to pltf.'s motion for protective order, and exhibits, filed.

10 Response of pltf. to deft.'s opposition to pltf.'s motion for production of documents, affidavits, filed.

10 Motion for pltf. for protective order argued and taken under advisement.

11 Motion of deft. for extension of time to reply to pltf.'s objections to the recommendation of the Pretrial Examiner, filed.

12 Motion of deft. for extension of time to file opposition to pltf.'s motion for a preliminary injunction, filed.

17 Response of pltf. to deft.'s motion for extension of time to file reply to pltf.'s objection to recommendation of Pretrial Examiner, filed.

23 Reply of deft. to pltf.'s opposition to the recommendation of the Pretrial Examiner, filed.

23 Motion of deft. to extend time until July 8, 1970, to answer motion of pltf. for preliminary injunction granted (signed 6-22-70).

23 Motion of deft. to extend time to and including June 23, 1970, to reply to pltf.'s objections to recommendations of Pretrial Examiner granted (signed 6-22-70) Bryant, J.

	29	Notice of pltft. to take deposition of Justin McCarthy, filed.
	29	Order granting motion of pltf. for protective order (signed 6-25-70) Bryant, J.
July	7	Motion of deft. for extension of time to file opposition to motion for preliminary injunction, filed.
	8	Motion of pltf. for production of documents argued and granted, Bryant, J.
	15	Request of deft. for admission of facts, filed.
	22	Memorandum by deft., filed.
	23	Order granting motion of pltf. for production of documents by Aug. 3, 1970, Bryant, J.
Aug.	7	Response of pltf. to deft.'s request for admissions, filed.
	14	Notice of deft. to take depositions of Thomas F. Kane, Hollis W. Bowers, and Edwin A. Brewer, filed.
	14	Motion of deft. for extension of time to respond to motion for preliminary injunction, filed.
	21	Interrogatories of pltf. to deft., filed.
	21	Request of pltf. for admissions; Exhibits A-Z; AA-ZZ; AAA-XXX, filed.
Sept.	8	Response of pltf. to deft.'s reply to objections to recommendation of Pretrial Examiner, filed.

14 Motion of deft. for extension of time within which to file opposition to pltf.'s motion for preliminary injunction; P&A, filed.

16 Motion of deft. for extension of time until Sept. 15, 1970, to answer motion of pltf. for preliminary injunction granted (signed 9-14-70), Bryant, J.

Oct. 2 Motion of Mike Trbovich individually and as chairman of and on behalf of Miners for Democracy, an Unincorporated Association, for leave to intervene, Exhibits A & B; C-1, C-2, C-3, & D, filed.

7 Motion of defendant to extend time to October 15, 1970, to answer motion of plaintiff for preliminary injunction granted (signed 10-6-70), Byrant, Jr.

7 Order substituting James D. Hodgson, Secretary of Labor, United States Department of Labor, for George P. Shultz as plaintiff (signed 10-6-70), Bryant, J.

8 Notice of deft. to take deposition of Henry A. Queen, filed.

8 Motion of deft. for extension of time within which to file answer or otherwise object to pltf.'s interrogatories and request for admissions, filed.

9 Memorandum of pltf.'s in opposition to motion of Mike Trbovich to intervene, filed.

12 Opposition of deft. to motion of Michael Trbovich and Miners for Democracy for leave to intervene, filed.

15 Motion of deft. for extension of time to file opposition to pltf.'s motion for preliminary injunction, filed.

16 Response of pltf. to deft.'s motion for an extension of time to file answers or otherwise object of pltf.'s interrogatories and request for admissions, filed.

19 Notice of deft. to take depositions of Thomas F. Kane and Edwin A. Brewer, filed.

21 Response of applicant to oppositions to motion to intervene, exhibit, filed.

21 Opposition of pltf. to motion for extension of time within which to file opposition to pltf.'s motion for preliminary injunction and pltf.'s request for immediate hearing on pltf.'s motion for preliminary injunction, affidavit, filed.

23 Motion of deft. for extension of time to file opposition to motion of pltf. for preliminary injunction argued and denied; opposition to be filed by October 29, 1970, Bryant, J.

22 Motion of Mike Trbovich, individually and as chairman of and on behalf of Miners for Democracy for leave to intervene, argued and taken under advisement, Bryant, J.

26 Transmittal sheet from USCA returning original record, filed.

29 Opposition of deft. to motion for preliminary injunction; affidavit; Exhibits A-I, Affidavits (22), filed.

Nov.	9	Answer of deft. to pltf.'s request for admissions, filed.
	9	Answer of deft. to pltf.'s request for admissions, filed.
	9	Motion of deft. for extension of time within which to answer certain interrogatories and certain requests for admissions, filed.
	17	Memorandum opinion denying motion of Mike Trbovich, individually and as chairman of and on behalf of Miners for Democracy, for leave to intervene, Bryant, J.
	17	Order denying motion of Mike Trbovich, individually and as chairman of and on behalf of Miners for Democracy for leave to intervene, Bryant, J.
	18	Response of pltf. to deft.'s motion for extension of time within which to answer certain interrogatories and certain requests for admissions, filed.
	18	Answer of deft. to requests for admissions, filed.
	20	Response of pltf. to deft.'s opposition to motion for preliminary injunction, filed.
Dec.	1	Order extending time for deft. to answer complaint to and including 12-14-70 (signed 11-30-70), Bryant, J.
	1	Order extending time for deft. to answer interrogatories and plft.'s request for admissions to and including 12-7-70 (signed 11-30-70), Bryant, J.

2 Order sustaining objections of pltf. to Pretrial Examiner's recommendations as to deft.'s interrogatories 41, 42, 44, 45, 46, 280 and 281; overruling as to deft.'s interrogatories 294, 295, 296 and 315; and overruling as to interrogatories 67, 73, 76, 81, 83, 87, 88 and 90; pltf. granted leave until 12-5-70 to answer (signed 12-1-70), Bryant, J.

2 Order granting motion of deft. to compel pltf. to answer interrogatories 70, 74, 75, 166, 175, 177, 183, 184, 235 and 247 denied as to remaining (signed 12-1-70), Bryant, J.

4 Deposition of Thomas F. Kane for deft., filed.

4 Supplemental answers of pltf. to deft.'s interrogatories 70, 74, 75, 166, 175, 177, 183, 184, 235 and 247, filed.

4 Answer of pltf. to deft.'s interrogatories 294, 295, 296 and 315, filed.

7 Answer of deft. to interrogatories, filed.

7 Answer of deft. to requests for admissions, filed.

8 Notice of appeal by intervenor Mike Trbovich from order of 11-17-70; copy mailed to E.L. Carey and H.F. Leathers, filed.

15 Deposition of Edwin A. Brewer for deft., filed.

15 Deposition of Henry A. Queen for deft., filed.

15 Answer of deft. to count one and count two of complaint, filed.

15 Order extending time for deft. to answer complaint to and including 12-15-70, Bryant, J.

18 Motion of deft. for order compelling deponent to answer questions propounded at deposition, filed.

18 Interrogatories of pltf. to deft., filed.

[Filed March 5, 1970]

COMPLAINT

Plaintiff brings this action under Titles II and IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 *et seq.*, 29 U.S.C. 401 *et seq.*), hereinafter referred to as the Act for a judgment declaring the election held by the defendant on December 9, 1969, null and void and directing the conduct of a new election under the plaintiff's supervision and for an order directing and compelling the defendant and its subordinate Districts to maintain records as required by section 206 of the Act (29 U.S.C. 436).

For his First Cause of Action plaintiff alleges:

I

Plaintiff brings this cause of action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 *et seq.*).

II

Jurisdiction of this cause of action is conferred upon the Court by section 402(b) of the Act (29 U.S.C. 482(b)).

Defendant is, and at all times relevant to this action has been, an unincorporated association maintaining its principal office at 900 Fifteenth Street, N.W., Washington, D.C., within the jurisdiction of this Court.

IV

Defendant is, and at all times relevant to this action has been, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j), and 401(a) of the Act (29 U.S.C. 402 (i), 402(j) and 481(a)).

V

Defendant, purporting to act pursuant to and in accordance with the provisions of its Constitution, held an election of its International officers among its members in good standing on December 9, 1969. This election was subject to the provisions of Title IV of the Act (29 U.S.C. 481 *et seq.*).

VI

(a) By letter dated December 18, 1969, Joseph A. Yablonski, a member in good standing of defendant union, filed a protest with defendant's International Executive Board, alleging violations of Title IV of the Act in the conduct of defendant's December 9, 1969 election of officers.

(b) By letter dated January 8, 1970, addressed to the plaintiff, Defendant through its General Counsel requested that the plaintiff conduct an immediate investigation of the December 9, 1969 election of International officers pursuant to Title IV of the Act, dispensing with

internal exhaustion of remedies procedures under defendant union's Constitution. Whereupon, plaintiff initiated an investigation.

(c) By telegram dated January 20, 1970, Mike Trbovich, a member in good standing of defendant union, through his counsel, filed a complaint with the Secretary of Labor alleging violations of the Act in the conduct of defendant's December 9, 1969 election of International officers.

VII

Pursuant to section 601 and in accordance with section 402(b) of the Act (29 U.S.C. section 521, 482(b)), plaintiff investigated said complaint and as a result of the facts shown by the investigation, found probable cause to believe that violations of Title IV of the Act had occurred in the conduct of defendant's election and had not been remedied at the time of the filing of this action.

VIII

Plaintiff alleges that in the conduct of the aforesaid election, defendant violated the provisions of Title IV of the Act (29 U.S.C. 401, *et seq.*) as follows:

(a) Section 401(a) of the Act (29 U.S.C. 481(a)) was violated in that defendant union failed to elect its international officers by secret ballot among the members in good standing in that many members were required or permitted to cast their ballots in such a manner that the member voting could be identified with the choice expressed.

(b) Section 401(c) of the Act (29 U.S.C. 481(c)) was violated in that

(i) defendant union failed to provide adequate safeguards to insure a fair election; including permitting campaigning at the polls;

(ii) denied candidates the right to have observers at polling places and at the counting of ballots

(c) Section 401(e) of the Act (29 U.S.C. 481(e)) was violated in that

(i) Defendant failed to conduct its election in accordance with its Constitution, including the failure of many local unions to elect tellers and to hold a membership meeting to set the time and place of the election;

(ii) Members were denied the right to vote for or otherwise support the candidate or candidates of their choice without being subject to penalty, discipline, or improper interference or reprisal.

(iii) Members were denied the right to vote, in that elections were not conducted in some locals.

(d) Section 401(g) of the Act (29 U.S.C. 481(g)) was violated in that defendant union used moneys received by it by way of dues, assessments, or similar levy, to promote the candidacy of its incumbent International officers, including but not limited to use of defendant's official publication, district offices, property and other facilities.

IX

The violations of section 401 of the Act (29 U.S.C. 481) found and alleged above may have affected the outcome of the aforesaid election.

For his Second Cause of Action plaintiff alleges:

I

Plaintiff brings this cause of action under Title II of the Act (29 U.S.C. 431 *et seq.*).

II

Jurisdiction of this cause of action is conferred upon the Court by section 210 of the Act (29 U.S.C. 440).

III

Paragraphs III and IV of this complaint relating to the First Cause of Action are hereby incorporated by reference into this Cause of Action.

IV

Defendant, is and at all times relevant to this action has been, subject to the reporting provisions of Title II of the Act (29 U.S.C. 431 *et seq.*).

V

Defendant has failed and is still failing to maintain records and to require its subordinate Districts to maintain records on matters required to be reported under Title II of the Act (29 U.S.C. 431 *et seq.*), which provide in sufficient detail the necessary basic information and data from which documents filed with the plaintiff may be verified, explained or clarified, and checked for accuracy

and completeness, as required by section 206 of the Act 29 U.S.C. 436).

WHEREFORE, the plaintiff prays for judgment:

(a) declaring the election held by defendant union to be null and void;

(b) directing the conduct of a new election for all constitutional officers under the supervision of the plaintiff;

(c) directing and compelling the defendant to maintain records, as required by section 206 of the Act (29 U.S.C. 436);

(d) enjoining the defendant, its officers, members, agents, servants, employees, attorneys and all persons in active concert and participation with them, pending final determination of the second cause of action of this complaint, from violating the provisions of Section 206 of the Act (29 U.S.C. 436);

(e) permanently and during the pendency of this action enjoining and restraining defendant, and its agents, servants, employees, attorneys and all persons acting, or claiming to act in their behalf and interest, from violating the provisions of section 206 of the Act (29 U.S.C. 436);

(f) awarding costs of this action; and

(g) granting such other relief as may be appropriate.

LAURENCE H. SILBERMAN
Solicitor of Labor

GEORGE T. AVERY
Associate Solicitor

U.S. Department of Labor

Of Counsel

/s/ William D. Ruckelshaus
WILLIAM D. RUCKELSHAUS
Assistant Attorney General

/s/ Thomas C. Flannery
United States Attorney

/s/ Harland F. Leathers
HARLAND F. LEATHERS
Attorney, Department of Justice

Attorneys for Plaintiff

[Filed March 5, 1970]

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff moves the Court for a preliminary injunction in the above-entitled action enjoining the defendant, United Mine Workers of America, its officers, members, agents, servants, employees, attorneys, and all persons in active concert and participation with it, from expending or permitting the expenditure of funds of the International or of its subordinate Districts without maintaining records on the matters required to be reported under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 *et seq.*) which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, such records to include specifically, but without limitation, receipts, vouchers, worksheets, and applicable resolutions, as required by section 206 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 436).

The issuance of such a preliminary injunction is requested on the grounds that:

(1) defendant has performed and will continue to perform the acts referred to;

(2) such action by defendant will result in irreparable injury, loss and damage to plaintiff, by impeding his continuing investigation pursuant to section 601 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 521, as more particularly appears from the affidavits of Thomas F. Kane, Hollis W. Bowers, and Henry

A. Queen, attached to plaintiff's motion for temporary restraining order; and

(3) the issuance of a preliminary injunction herein will not cause inconvenience or loss to defendant but will prevent irreparable injury to plaintiff.

LAURENCE H. SILBERMAN
Solicitor of Labor

GEORGE T. AVERY
Associate Solicitor

EDWIN S. HOPSON
ROGER D. MARSHALL
Attorneys

U.S. Department of Labor
Of Counsel

/s/ William D. Ruckelshaus
WILLIAM D. RUCKELSHAUS
Assistant Attorney General

/s/ Thomas C. Flannery
United States Attorney

/s/ Harland F. Leathers
HARLAND F. LEATHERS
Attorney, Department of Justice

Attorneys for Plaintiff

[Filed March 5, 1970]

AFFIDAVIT

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

Thomas F. Kane, being duly sworn, deposes and says:

1. I am a Special Investigator, employed by the Branch of Auditing and Accounting Standards, Division of Reports, United States Department of Labor.

2. In the course of my official duties, I examined the records of the United Mine Workers of America (UMWA),

900 15th Street, N.W., Washington, D.C. concerning the granting of loans by the UMWA to its subordinate Districts. The records indicated that loans were made to subordinate Districts during the years 1967, 1968 and 1969 in the following amounts:

1967	$1,662,390.00
1968	$1,658,922.20
1969	$2,107,500.00

The amount of the loans made to each of the Districts in each of these three years is set forth in Exhibit A attached hereto.

3. My examination disclosed that these loans were made on the basis of requests from District officials and the request in each case indicated that the funds were to be used for organization, administration or other union expenses, without further specification.

4. The records disclosed that when a loan was requested, International President W.A. Boyle issued instructions to International Secretary-Treasurer John Owens to issue a check in the amount requested and remit the funds to the District. Checks issued to make such loans were either deposited in the bank to the credit of the District or were cashed by an official of the District requesting the loan.

5. My examination of the records of the UMWA International did not disclose any documentary evidence concerning the disposition of these loaned funds.

6. Each District submits to the International a monthly report summarizing the receipt and disbursement of funds by the District. Nothing in the monthly reports serves to

verify that funds received by way of loan from the International were used for the purpose for which the loan was requested. Nor is there any other documentary evidence submitted by the Districts to the International indicating the disposition of the loaned funds.

/s/ Thomas F. Kane
Thomas F. Kane

* * *

[Filed March 5, 1970]

AFFIDAVIT

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

Henry A. Queen, being duly sworn, deposes and says:

1. I am the Chief, Branch of Elections and Trusteeships, Office of Labor Management and Welfare-Pension Reports, United States Department of Labor, Washington, D.C.

2. In the course of my official duties, I supervised the investigation which was conducted of the election of International officers held by the United Mine Workers of America in 1969.

3. In connection with the aforesaid investigation, the financial records maintained in the offices of the subordinate Districts of the United Mine Workers of America were examined in order to determine whether funds of

a labor organization had been expended to promote the candidacy of any person in the election in violation of section 401(g) of the Labor-Management Reporting and Disclosure Act of 1959.

4. The examination of such records disclosed numerous instances in which the records were not sufficiently maintained in order to permit a determination to be made whether funds had been expended in violation of section 401(g).

5. The financial records of District 2 disclosed that seven individuals described as organizers had been added to the payroll during the period between June 25 and July 1, 1969, and were still on the payroll at the time of the investigation. Checks were issued to these organizers for "organizing expenses" without any supporting vouchers or receipts to substantiate the purpose for which such expenditures were actually made.

6. The investigation disclosed that in February and March 1969, Secretary-Treasurer John Seddon prepared checks to each of four Executive Board members for District 5. These checks were cashed and the proceeds returned to Seddon, who states that he placed them in his safe deposit box in the Union National Bank, Pittsburgh, Pennsylvania. Thereafter, on July 14, 1969, Sedden deposited a sum equal to the total of the four checks ($8,560) in the checking account of District 5 in the National Bank of Washington, Washington, D.C. The records do not indicate what disposition was made of these funds in the interim.

The records of District 5 disclosed that 19 presidents of local unions within the District participated in a six-week

"organizing" campaign in Butler and Mercer Counties, Pennsylvania. Each participant received from District funds approximately $1,650 gross salary and expenses for the six-week period. The records of the District do not contain any receipts or other documentary evidence supporting the payments to these officers for expenses. Ten of the same 19 local union presidents made a subsequent six-week trip into the same areas, and were reimbursed at approximately the same rate, again without any documentary support of their expenses.

7. The financial records of District 12 disclosed that District Board member Jesse M. Ballard was reimbursed for mileage and expenses during a 5-day period in which he was hospitalized. In the same District, two other District members admitted that the mileage for which they claimed reimbursement consisted of "short miles."

8. Examination of the records of District 19 disclosed that "organizing" payments totaling $19,970 were made to 23 members. The District records disclosed no documentation of any expenses incurred by these 23 members for which reimbursement could properly be made.

9. Investigation of the financial records for District 28 disclosed checks totaling $3,180.84 were paid to union members to reimburse them for lost time and expenses in connection with a trip to Pittsburgh, Pennsylvania, and Washington, D.C. The payment was charged to organizing expenses. Subsequently, an International auditor discovered that the trip had been made for campaign purposes, and the money was then repaid to the District from funds of the campaign committee supporting the reelection of the incumbent officers. Another check in the amount of $360 had been made payable to an International Representative in connection with the same trip, but this payment was undetected and no restitution was made.

The investigation disclosed that checks were drawn for advances and reimbursement of expenses to officials of District 28 without any supporting vouchers or documentations. On December 31, 1969, a check was drawn in the amount of $5,000, payable to District Representative E. G. Gilbert upon the basis of his representation that the money was for organizing expense, without further itemization or documentation.

10. In District 29, examination of the financial records disclosed that between 1961 and 1968 the District received $30,000 from Local 7086 and $16,000 from Local 5997, allegedly for expenses previously paid by the District, but without any supporting records in the form of receipts or expense vouchers. In 1969, District 29 received an additional $17,000 from Local 7086 and $13,000 from Local 5996, again without any specific information or documentation concerning the purpose of the payments.

11. The financial records of District 31 disclosed that between April 15, 1969 and October 10, 1969, seven checks totaling $9,700 were drawn to the order of the First National Bank, and one check for $500 was drawn to the order of L. Clyde Riley, who is the Secretary-Treasurer of District 31, and were cashed. There was no documentation indicating the disposition of these funds.

/s/ Henry A. Queen
Henry A. Queen

* * * * *

[Filed March 5, 1970]

AFFIDAVIT

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

Hollis W. Bowers, being duly sworn, deposes and says:

I am employed as a special investigator by the Branch of Special Investigation, Division of Compliance Operations, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor.

In the course of my official duties, I participated in a financial investigation of the United Mine Workers of America (UMWA), 900 15th Street, N.W., Washington, D.C.

During that financial investigation, I examined expense accounts of the UMWA and determined that the UMWA has failed to require and direct its officers and employees to maintain adequate records to support disbursements for expenses, said records being necessary to determine the validity of the disbursements for expenses. My examination of the records with respect to disbursements to officers and employees for expenses indicated that vouchers were submitted and paid without any specification of mileage rates, and without any documentation of hotel and restaurant bills or other bills for which reimbursement was claimed.

My examination of the financial records of the UMWA concentrated primarily on 1967 and 1968 records. I also examined some of the records pertaining to 1969. The records for 1969 which I examined indicated that the

UMWA has continued to make disbursements for expenses without adequate supporting records.

I was informed by responsible officers of the UMWA that the UMWA had not, prior to January 1, 1970, issued instructions to its officers and employees concerning the submission of proper itemization and documentation of expense vouchers. I ascertained from a review of the minutes of the International that in January 1970, the International Executive Board issued instructions that mileage would be reimbursed at the rate of 12 cents per mile.

I have been informed by responsible officials of the UMWA that the UMWA has never undertaken an audit of expenses to determine the validity of the expenses claimed.

I have also examined the UMWA labor organization financial reports filed on United States Department of Labor Form LM-2 for the fiscal years ended December 31, 1967 and December 31, 1968. The LM-2 filed for 1967 shows $864,479.00 disbursed to officers and employees as expenses. The LM-2 filed for 1968 shows $1,070,930 disbursed to officers and employees as expenses. The LM-2 for 1969 has not yet been filed.

/s/ Hollis W. Bowers
Hollis W. Bowers

* * * * *

[Filed March 5, 1970]

[EXHIBIT A TO MOTION FOR PRELIMINARY INJUNCTION]

UMWA LOANS TO DISTRICTS DURING YEAR 1967

DISTRICT	AMOUNT
1	$80,000
2	330,000
3	10,000
4	35,000
5	140,000
6	5,000
7	25,000
9	60,000
10	1,000
11	25,000
12	15,000
15	40,500
19	384,290
20	25,000
21	2,500
23	10,000
26	5,500
27	10,000
28	125,000
30	273,600
31	60,000
	$1,662,390

[Filed March 5, 1970]

UMWA LOANS TO DISTRICTS DURING YEAR 1968

DISTRICT	AMOUNT
1	$72,000
2	315,000
3	20,000
4	50,000
5	180,000
6	30,000
7	30,000
9	83,300
10	4,000
11	20,000
12	15,000
15	35,000
19	340,599.20
20	30,000
21	5,000
22	10,000
23	5,000
26	2,000
27	17,000
28	50,000
30	264,023
31	81,000
	$1,658,922.20

[Filed March 5, 1970]

UMWA LOANS TO DISTRICTS DURING YEAR 1969

DISTRICT	AMOUNT
1	$20,000
2	480,000
3	20,000
4	120,000
5	360,000
6	115,000
7	5,000
9	40,000
10	13,000
11	20,000
12	70,000
14	5,000
15	30,000
17	40,000
19	183,000
20	25,000
21	10,500
23	40,000
25	150,000
30	109,000
31	252,000
	$2,107,500

[Filed October 2, 1970]

MOTION OF MIKE TRBOVICH, INDIVIDUALLY AND AS CHAIRMAN OF AND ON BEHALF OF MINERS FOR DEMOCRACY, AN UNINCORPORATED ASSOCIATION, FOR LEAVE TO INTERVENE AS A MATTER OF RIGHT UNDER RULE 24(a) F.R.C.P., OR, IN THE ALTERNATIVE, FOR PERMISSION TO INTERVENE UNDER RULE 24(b) F.R.C.P.

Come now Rauh & Silard, attorneys for Mike Trbovich, and move this Court for leave to intervene in the above-entitled action and to file his Complaint attached hereto as Exhibit A. In support of this Motion, applicant shows as follows:

I. WITH RESPECT TO THE FIRST CAUSE OF ACTION

1. On December 9, 1969, there was held an election of International Officers in the United Mine Workers of America (hereinafter referred to as "UMWA").

2. On January 20, 1970, Mike Trbovich, a member in good standing of the UMWA, filed a complaint with the Secretary of Labor, challenging the results and conduct of the election. (A copy of that complaint is attached hereto as Exhibit A.) See also paragraph VI (c) of the Secretary's complaint.

3. On March 5, 1970, the Secretary of Labor filed the Complaint in the instant proceeding, seeking an order "declaring the election held by the defendant to be null and void" and "directing the conduct of a new election for all constitutional officers under the supervision of the plaintiff."

4. On April 1, 1970, in Clarksville, Pennsylvania, the organization Miners for Democracy was formed for the purpose of bringing about reform in the UMWA; its goals include the holding of democratic elections and the restoration of sound fiscal management of the UMWA's assets.

5. As an individual UMWA member and as National Chairman of Miners for Democracy, applicant has a direct and substantial interest in the subject matter of this action and is so situated that the disposition of this action and the terms of any order entered will as a practical matter impair or impede his ability to protect that interest.

6. Applicant's interest is not adequately represented by the parties to this action. (See letter to Senator Harrison A. Williams, Exhibit C-1; letter from Senator Williams to Senate Labor Subcommittee members, Exhibit C-2; and a memorandum prepared and distributed by the Department of Labor, Exhibit C-3.)

II. WITH RESPECT TO THE SECOND CAUSE OF ACTION:

7. On December 4, 1969, applicant herein, Mike Trbovich, and eleven other members of the UMWA filed a Complaint against defendant herein, UMWA, and its three principal International Officers, W.A. Boyle, George J. Titler, and John Owens, "For an accounting, restitution and damages." The Complaint alleges that "the individual defendants have violated the fiduciary duties set forth in Section 501(a) of the [Labor-Management Reporting and Disclosure Act of 1959]." That proceeding (Civil Action No. 3436-69) is presently pending before this Court. A copy of the Complaint therein is attached hereto as Exhibit D.

8. In Cause II of the instant Complaint the plaintiff Secretary of Labor seeks an order "directing and compelling the defendant to maintain [financial and other] records, as required by Section 206 of [the Labor-Management Reporting and Disclosure Act] and "enjoining the defendant, its officers, members, agents, servants, employees, attorneys and all other persons in active concert . . . from violating the provisions of 206 and permanently and during the pendency of this action restraining defendants and its agents . . . from violating the provisions of 206."

9. As an individual UMWA member and as National Chairman of Miners for Democracy, applicant has a direct and substantial interest in the subject matter of this action and is so situated that the disposition of this action and the terms of any order entered will as a practical matter impair or impede his ability to protect that interest.

10. Applicant's interest is not adequately represented by the parties to this action. (See Exhibit C-3.)

11. There are common questions of both law and fact in the intervenor's complaint (Exhibit A) and in both of the causes of action in the original Complaint filed in this matter by the Secretary of Labor on March 5, 1970.

WHEREFORE, Mike Trbovich prays this Court grant him leave to intervene in both causes of action in this proceeding as a matter of right under 24(a) of the Federal Rules of Civil Procedure, or, in the alternative, that he be permitted to intervene under Rule 24(b) of the Federal Rules.

Respectfully submitted,

Joseph L. Rauh, Jr.
John Silard
Elliott Lichtman
Clarice R. Feldman
Joseph A. Yablonski

Rauh & Silard
1001 Connecticut Avenue, N.W.
Counsel for Intervenor

[EXHIBIT A TO MOTION FOR LEAVE TO INTERVENE]

COMPLAINT OF INTERVENOR

Come now Rauh & Silard, attorneys for the Intervenor, Mike Trbovich, and file this Complaint under Titles I, II, IV, V, VI of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter referred to as "LMRDA") 29 U.S.C. 401, *et seq.*

1. Intervenor-Plaintiff, Mike Trbovich, whose address is R.D. No. 1, Box 175, Clarksville, Pennsylvania, is a member in good standing of the United Mine Workers of America (hereinafter referred to as "UMWA") and its Local Union 6330 and is the National Chairman of Miners for Democracy, an unincorporated association formed on April 1, 1970, to bring about reform in the UMWA, and, in particular, to democratize its election procedures and to promote sound fiscal management of the UMWA's assets.

2. Intervenor adopts and incorporates herein by reference all of paragraphs I, II, III, IV, V, VI, VII, VIII, and IX of the First Cause of Action in the original Complaint herein filed by the Secretary of Labor on March 5, 1970.

3. In addition to the jurisdictional allegations contained in the original Complaint, this Court also has jurisdiction of this matter under Section 102 of LMRDA (29 U.S.C. 412), Section 201 of LMRDA (29 U.S.C. 431), Section 501 of LMRDA (29 U.S.C. 501) and under the District of Columbia Code, Section 11-521 (1967 ed.).

4. In addition, Intervenor asserts that the following allegation should be inserted in the Complaint in paragraph VIII (c):

(iv) Thousands of members were required to vote in the more than 500 local unions of the UMWA which exist in violation of the UMWA Constitution which practice may have influenced the outcome of the election;

5. Intervenor further asserts that the following allegation should be inserted in the First Cause of Action in the Complaint as VIII (e):

(e) Section 401(e) of the LMRDA (29 U.S.C. 481(e)) was violated in that the President of the UMWA improperly interfered with the rights of UMWA members to vote for the candidates of their choice when, during the election campaign period, by trick or fraud or by collusion with the employers' representative on the UMWA (Bituminous) Welfare and Retirement Fund, he engineered a $30,000,000 annual increase in pensions to retired miners which increase was designed and intended to influence and may have influenced the votes of 70,000 pensioned union members and, therefore, the outcome of the election and which jeopardized the continued solvency of the Fund.

6. Intervenor adopts and incorporates herein by reference all of paragraphs I, II, III, IV, and V of the Second Cause of Action in the original Complaint filed by the Secretary of Labor on March 5, 1970.

7. Intervenor, in addition, asserts that the following allegation should be inserted as an additional paragraph in the Second Cause of Action, paragraph VII:

Defendant has failed and continues to fail to provide and make available to its members adequate information about and record of its finances, including its books, records and accounts which it is required to do under Section 201 of the Act (29 U.S.C. 431) and under Article IX, Section 32 of the UMWA Constitution.

8. Intervenor adopts and incorporates herein by reference all of the paragraphs in the prayer for relief contained in the original Complaint filed by the Secretary of Labor on March 5, 1970.

9. In addition to the matters contained in the prayer for relief in the original Complaint, Intervenor includes the following paragraphs:

(f) directing and compelling the defendant to immediately disband all local unions which do not comply with the requirements of the UMWA's Constitution, and to require the transfer of all members of such locals to local unions which exist in compliance with the UMWA Constitution;

(g) appointing and installing a Board of Monitors to oversee and approve the maintenance of books, records and accounts and the receipts and expenditure of funds and preservation of the UMWA's assets until such time as the Court believes that the UMWA has instituted and will maintain proper record-keeping and accounting procedures and that the assets of the UMWA are not in danger of being dissipated;

(h) rule that defendant's President breached the fiduciary duty he owed to all UMWA members by raising bituminous pensions in order to benefit himself and other incumbent International Officers and order defendant to publish this ruling in a manner adequate to dissipate the effect of this increase on the pensioned voters;

(i) establish rules for the conduct of a new election and enforce such rules for the new election or appoint a panel, to be paid out of UMWA funds, to establish and enforce fair election rules for such election;

(j) grant to the intervenor reasonable attorneys' fees and costs;

10. Paragraphs (f) and (g) of the original Complaint filed by the Secretary of Labor on March 5, 1970, should, respectively, be renamed paragraphs (k) and (l).

Respectfully submitted,

Joseph L. Rauh, Jr.
John Silard
Elliott Lichtman
Clarice R. Feldman
Joseph A. Yablonski

Rauh & Silard
1001 Connecticut Avenue, N.W.
Attorneys for the Intervenor

[EXHIBIT B TO MOTION FOR LEAVE TO INTERVENE]

TELEGRAM

JANUARY 20, 1970

Sent – 3:37 p.m.

THE HONORABLE GEORGE P. SHULTZ
SECRETARY OF LABOR
WASHINGTON, D.C.

MIKE TRBOVICH, VICE PRESIDENT OF LOCAL UNION 6330 OF UNITED MINE WORKERS AND CAMPAIGN CHAIRMAN FOR YABLONSKI-BROWN TICKET, HAS ASKED ME TO FORWARD THIS MESSAGE TO YOU QUOTE I HEREBY CHALLENGE THE DECEMBER 9 UMWA ELECTION FOR REASONS STATED IN YABBLONSKI LETTER TO INTERNATIONAL TELLERS AND APPENDICES ATTACHED THERETO AND IN RAUH LETTER TO YOU DATED JANUARY 13TH.' I URGENTLY REQUEST A DEPARTMENT OF LABOR INVESTIGATION OF ELECTION BASED ON THOSE LETTERS. MASSIVE VIOLATIONS OF LAW AND UMWA CONSTITUTION COMMITTED BY UMWA OFFICERS AND THOSE WORKING WITH THEM CLEARLY AFFECTED RESULTS OF ELECTION. NEW NOMINATIONS AND NEW ELECTIONS ARE ESSENTIAL TO A CLEAN-UP OF THIS UNION UNQUOTE.

JOSEPH L. RAUH, JR.

[EXHIBIT C-1 TO MOTION FOR LEAVE TO INTERVENE]

May 26, 1970

The Honorable Harrison Williams
Chairman, Senate Labor Subcommittee
Suite 4320, Senate Office Building
Washington, D.C. 20510

Dear Senator Williams:

On May 4, 1970, the Secretary of Labor, George P. Shultz, his Assistant, Willie J. Usery, and his Solicitor, Laurence H. Silberman, testified before your subcommittee in connection with the Department's activities concerning the United Mine Workers of America, with particular emphasis on the recent UMWA election. That same day we requested by telegram and telephone the opportunity to respond and rebut the guilt-ridden and baseless statements made by the Secretary and his associates. We were denied this opportunity." Having been denied the right to respond promptly in person, we wish to insert in the record our review of the Secretary's statement and indicate for the subcommittee its most serious inaccuracies.

Refusal to conduct pre-election investigation. Let us begin with the Secretary's continued insistence that the Labor Department's policy of refusing to conduct an investigation during the course of an election is a proper one. That policy flies in the face of the Secretary's admissions concerning the "broad language of section 601" (p. 2) and the decisions of "two courts of appeal [that] have held that the broad investigatory authority under

Title VI is not limited by the express procedural requirements of section 402" (p. 4). These damaging admissions conclusively establish that the Secretary's refusal to investigate in the pre-election period had no basis in the law (LMRDA) or in the court decisions interpreting it.

Indeed, the primary justification for the Secretary's inaction is his own previous inaction and that of his predecessors since 1959. The other asserted reason, stripped of the obfuscating rhetoric, is that to enforce the law – to conduct an investigation – might injure or harm the party accused of breaking the law. The Secretary's fear that an investigation might help or hurt candidates is no reason to decline to carry out his responsibilities. The emphasis should be placed on screening the allegations and charges to discard the baseless and frivolous ones, and to investigate those with merit. A policy against pre-election investigation might make some sense in the ordinary case; an inflexible rule against pre-election investigation in the face of the UMWA bosses' massive violations of law makes no sense at all. The Secretary's investigatory presence would insure greater compliance with the law and no accusatory proceedings would be required until after the returns are in. Thus, the Secretary's fear that his action "would almost surely influence the outcome of the election" (p. 6) is a hollow one. It is simply a boogie man erected to justify a bureaucratic indifference that contributed to the murder of the Yablonski family. Contrary to the Secretary's suggestion that the Act must be amended to permit pre-election investigations, it is clear from the foregoing and the general intent of the legislation to protect union members' rights and promote union democracy, that the Act need not be amended so much as the Secretary must be directed to perform the responsibilities Congress imposed on his office.

In dealing with his inaction in the UMWA election case, the Secretary states that "the only purpose of such a pre-election investigation in this case would have been to publicize the existence of violations of the statute" (p. 6). But that was not the reason we requested an investigation; we have said since the outset that a *federal presence* would have prevented further violence and other daily violations of the law. Only through the most tortured reasoning could the Secretary arrive at the conclusion that because the UMWA had broken the law – and that Mr. Yablonski's pre-election suits conclusively demonstrated this – Mr. Yablonski's requests for an investigation should not have been heeded. The Subcommittee should have recognized this as sophistry, but the Secretary was not even questioned on this matter.

Violence. The discussion of violence during the campaign further demonstrates the Secretary's lack of candor. On February 21, 1970, we wrote to the Secretary describing in detail much of the violence that occurred during the course of the campaign. The letter ended with the following request:

> "We know we cannot affect your decision, but we do have the right as American citizens to demand answers to our verified evidence of violations of law. *We ask that you give us an answer point by point to each illegality we have charged.* We ask you to take each such illegality separately and tell the public whether it was proven, erroneous, or not investigated."

To this day, we have never received a seriatum disposition of our verified charges. We have yet to be informed of the results of any investigations or even to be informed

that there were any investigations on most of these incidents, despite the Secretary's assertion that "[e]very one of those allegations was investigated" (p. 7).

The testimony on the two incidents of violence which were allegedly investigated is illuminating. Contemporaneous with the events in Shenandoah, the Shenandoah Evening Herald carried a banner headline, pictures and a very descriptive article and editorial relating to the manner and fashion that the meeting was broken up. Subsequently, we obtained affidavits which corroborated the impartial newsmen's story. In sum, they disclose that a union meeting of union members supporting the candidacies of Yablonski and Brown was scheduled for the Shenandoah High School at 3:00 o'clock p.m. on June 29, 1969. *Before* the meeting started, International and District representatives, including John Karlavage and Boley Overa, led a group of shouting, placard waving individuals into the school auditorium. They prevented the meeting from being held and threatened the old pensioned miners and ordered them to go home. The attached newspaper story and affidavits speak for themselves. The Secretary's indication that the law permits this type of conduct is so incredible that it should easily have been discredited by the committee.

No one paragraph in the Secretary's 22 page statement more clearly illustrates the manner in which the federal agencies combine *not* to enforce the law than the one on page eight where the Secretary describes the events at Springfield, Illinois on June 28, 1969 where Mr. Yablonski was brutally assaulted and knocked unconscious. Within a day after the incident the Justice Department through Henry Peterson was given a factual summary of what had occurred. In another day or so, the names of eight people

who attended the meeting were also given to him. Neither Mr. Yablonski (to our knowledge) nor anyone else was ever interviewed at that time concerning this incident.

On December 23rd, Mr. Peterson informed Mr. Rauh that the F.B.I. had been unable to determine who the assailant was, and that the matter had been dropped. Secretary Shultz, nevertheless, testified that the assailant had been identified, that he stated that he had struck Mr. Yablonski on the chin from the front* and "that it was strictly a spontaneous action and that he was not paid or otherwise induced to commit the assault . . ." (p. 8). A phone call to the Department of Justice after the Shultz testimony revealed that the assailant had indeed been identified but not until the investigation was reopened *following the murders.*

But neither Mr. Rauh nor anyone in the Yablonski family or anyone connected with the Yablonski campaign has ever been interviewed or consulted during this investigation. Apparently the Labor Department feels compelled to accept the explanations of the perpetrators of union crime without reservation. The testimony of Messrs. Usery and Silberman on this point are illustrative of their utter refusal to discuss this matter with Mr. Yablonski, his sons or campaign aides. The Justice Department was initially informed that the Springfield meeting had been set up by

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* The F.B.I. interviewed Emil Sposato, M.D., the doctor who examined Mr. Yablonski, the night of the incident. But neither the F.B.I. nor Labor Department ever interviewed or asked to see the report records and notes of the treating physician, Robert Schwartz, M.D. Doctor Schwartz has unequivocally stated that Mr. Yablonski was struck on the back of the neck. Nor has the treating neurologist, Doctor Stahl, ever been interviewed to our knowledge.

a Mr. George Morris, Jr., who was erroneously believed to be a leader of the anti-Boyle forces in Illinois. Only a dozen or so local union officials attended the meeting in a hotel room at the State House Inn. It was not a "rally" (as Mr. Usery stated, p. 666), but was a preliminary, introductory session with a handful of local leaders. Though Mr. Yablonski was led to believe those in attendance favored his candidacy, he was not warmly received. Thus, when Mr. Usery states the group was "Yablonski supporters", he is again wrong. Finally, his statement about the substance of the discussion – voting rights of pensioners – is drawn directly from a Tony Boyle press release. Mr. Yablonski never at any time, let alone in the company of a dozen hostile Boyle supporters, maintained that pensioners should not vote. Either Boyle propounded this lie for the assailant which the Secretary readily accepted, or Mr. Boyle has access to the Department's investigatory files. Nevertheless, even the contrived set of facts described by Shultz and Company makes out a *prima facie* case of a violation of Section 610 rather than being deserving of the whitewash applied by the Labor Department.

But more significantly, after the Shultz testimony the Labor Department admitted they did not know that George Morris, Jr., the man who set up the meeting, had received more than $1500 from UMWA District 12 (Illinois) last year. Nor did they know that four of the other men that Mr. Yablonski identified as attending the meeting received more than $500 each from District 12 in 1969.* Mr. Chairman, the investigation of the Springfiled matter was

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* Erne Bigham, $548; Robert Elmore, $755.45; Bernard Martin, $1,115.85; Jack Ponsetti, $530.

a massive cover-up operation. It indicates that in the enforcement of this law (LMRDA), the Government accepts the word of the attackers and does not even interview the victim.

Blatant misrepresentations by the Secretary. Needing an opportunity to cast doubt on the motives of those critical of his performance, the Secretary next resorts to an outright lie. Our pleas to have him commence an investigation are regarded as "appeals . . . to the Department . . . [for] assistance in [the] campaign" (p. 8). The only evidence cited by the Secretary to support this assertion is that in the meeting of December 15, after the election was over, we "stated that an early investigation was necessary to maintain the campaign's momentum" (pp. 8-9). The word "momentum" was Mr. Silberman's; it was used by him to describe our contention that a prompt investigation was necessary because readily available sources of information would dry up after the official results of the election were made known. Local union members and officers would be more cooperative if they believed the election was still hanging in the balance, that reprisals might not be visited on them for cooperating. Though Solicitor Silberman used this word "momentum" in the presence of no less than a dozen people, his brazen effort to distort the word, as *he* used it, is conduct which even the Labor Department should find reprehensible.

The Secretary tries to but cannot justify his conduct by saying that both sides found fault with his performance (p. 9). The matters contained in the Department's November 26, 1969 Summary Report of Investigation, though sharply criticized by UMW incumbents, were not earth shaking; most were, in fact, public knowledge. If

this was the sum total of six months investigative work, the investigation uncovered little.

The same can be said of the post-election investigation. The manner in which the Secretary glosses over the $30 million purchase of pensioner votes shocks even our by now dulled senses. Our research has uncovered nothing in the history of the LMRDA which compels a restrictive reading of the words "improper interference" with an election, as used in Section 401(e). Indeed, basic principles of statutory construction require that the words be broadly defined; otherwise they are redundant with the other words in the series: "subject to penalty, discipline, or improper interference or reprisal of any kind . . ." Apparently recognizing the shallowness of this line of reasoning, the Secretary trots out another boogie man – that a proper reading of the statute might imperil collective bargaining during an election campaign (pp. 14-15). We urge the committee to see through this transparent effort by the Secretary to evade his responsibility for enforcing the Act. In no way could the Secretary bring into "question any agreement negotiated . . . during an election campaign." The agreement itself could not be set aside; only the election could be set aside and it should not unless improper motive (an intent to influence the election by aiding an incumbent) could be demonstrated – a fact highly unlikely since most unions, unlike the UMWA, deal at arms' length with employers. The Secretary's vague generalizations concerning the soundness of the increase are in no way related to any complaint to that effect. We have never contended that the soundness of the increase was subject to his or anyone else's review. It is merely illustrative of the haste and political motivation behind the increase itself.

The Secretary's position regarding bogus locals is but another example of blindly accepting the word or position

of the UMW. Unwilling to make a decision concerning this matter, the Secretary has refused to examine the plain language of the UMW Constitution, which states that "local unions shall be composed of ten or more workers . . . working in or around coal mines" and "[i]f any mine or colliery is abandoned . . . the [local union] charter and all its moneys . . . shall be taken over by the International Union [and] . . . any remaining members . . . given transfer cards." Despite statements like Judge Hart's – "they apply the Constitution when they want to, they don't when they don't" – the Secretary accepts the weak explanation that the union has always interpreted the constitution to permit non-functioning locals to exist. Mr. Chairman, is it a defense to an unconstitutional act that one has always disregarded the constitution? Only Secretary Shultz could answer this in the affirmative.

The most incredible display of naivete is his concluding statement on the bogus local question that "even if there had been a technical violation [of the Constitution], it could not have had any effect on the outcome of the election" (p. 17). Apparently, the Secretary believes there is no difference between 1250-1300 locals voting in an election and about 700 locals voting. Apart from the logistics of supplying observers, etc., to about half of the number of locals that supposedly voted, there was the additional problem of finding the polling places of these locals, and the myriad of difficulties of guaranteeing a secret ballot vote once they were found and observers sent. Worst of all, old pensioners were the prey for the hired Boyle men that "ran" the elections in these "bogus" locals.

The other remaining matter which the Secretary left out of the "election case" was the massive group of dust committeemen, organizers, etc., that were added to the

UMW payroll in 1969 at an estimated cost of more than $500,000. First, let us deal with the question of "organizers", since Mr. Usery suggested that the union "had stepped up its organizing at that time".(p. 680). Aside from the union's bald assertion, where does Mr. Usery get his facts? From Lou Antal, who testified before this subcomittee that he was paid $400 a week, but did no organizing? From Tony Dovshek, who told the Labor Department investigators that he was paid for "organizing" though he was in Canada fishing? How many new mines were organized last year? At what mines were these organizing drives conducted? How many NLRB elections were held in comparison with prior years? Why were so many organizers hired in Mr. Yablonski's Pennsylvania home district (which is predominantly organized) when the most substantial unorganized territory is in Eastern Kentucky, where none were hired? Could it be because of the torrid election contest in Pennsylvania whereas Mr. Yablonski hardly campaigned in Kentucky for fear of violence?

The same applies to "dust committeemen". What did they do? They weren't allowed inside the mines to check the dust; and even if they were, they had no equipment to monitor it. Why were six full time dust committeemen added to the payroll in District 4 (which borders Mr. Yablonski's home) at a cost of $70,000, while District 20 (Alabama), which has more mines and more active miners than District 4, had no dust committeemen? Neither did Utah or Colorado. Was it because there was no dust in the mines in those states or because there was no real election campaign in those states? Why are some of these all important dust committeemen being laid off and required to return to work after the election? If these men could not get inside the mine, what did they do – educate the men that dust exists in coal mines? Why is it that

regardless of the designation given to employees hired in 1969, they come from the coal areas where Boyle had the stiffest election fight (West Virginia, Pennsylvania, Ohio)?

Then there is the separate question of lobbyists (contrary to the Secretary's testimony, the "dust committeemen" were not lobbyists). All were apparently paid two or three times their lost salaries for participating in lobbying junkets. The fact that most of these novice lobbyists were pro-Boyle boosters was apparently of no consequence to the Secretary.

Finally, there is the argument that many of these 1969 hirees were put on the payroll before Mr. Yablonski announced his candidacy (p. 18), as though that would legitimatize the practice. But the Secretary should know that other anti-Boyle candidates had surfaced early in 1969, and certainly Boyle and Company were aware that nominations and an election would be held (regardless of who the opposition would be) during the year. The Secretary seems to say that any union incumbents may hire at exorbitant salaries as many partisans as they wish at union expense, and that so long as they appear to perform some type of work – the Department will not interfere with their freedom to campaign for their benefactors. We trust that the subcommittee does not share this construction of the Act.

The Secretary seems to go out of his way to characterize us as being uncooperative in not making available the names and addresses of Mr. Yablonski's election obsevers (p. 19). Having failed in his duty to investigate, he now seeks to shift the blame to those who begged for action. Again, the Secretary must resort to a distortion of the record to serve his purposes. The facts are that sometime in mid-January a caller from the Department asked for the names and addresses of our

observers. The Department was furnished with hundreds of observer reports, but there was also a small card catalogue containing additional names and the addresses of observers assigned out of Mr. Yablonski's Washington D.C. Campaign Headquarters. Mrs. Clarice Feldman informed the Labor Department that the card catalogue was in Mr. Yablonski's home, which was under guard by the FBI and state authorities. Since no family member was to be admitted, Mrs. Feldman advised the Department to check with the authorities. Apparently this was never done; nor was the request ever renewed after the house was finally released. Yet, the Secretary castigates us for his Department's own failure.

The Yablonski murders. The final two pages of the Secretary's statement deserve special mention. The Secretary says this was just another election campaign, and then in an effort to publicly cleanse his conscience he says twice that the murders had nothing to do with the election. Who is the Secretary of Labor to make such an assertion? Has he read the indictments returned by the Cleveland Grand Jury? Is he aware that one count deals with a conspiracy to violate a union member's rights, and that another involves an obstruction of justice to prevent Mr. Yablonski from testifying before a UMW Grand Jury Probe in Washington, D.C.? Is he aware that Mr. Silas Huddleston, President of a Local Union of the UMWA in LaFollette, Tennessee, has been indicted on these charges? Is he aware that the United States Attorney in seeking the grand jury indictment had to have evidence of probable cause and that the grand jury had to find that probable cause to indict? While no one questions that all five of the indicted persons are innocent until proven guilty, the fact remains that all the evidence to date points to a clear connection between the murders and the election through the participation of Huddleston (and another Local Union President indicted for perjury); the presumption of innocence does not

require an administrative official to reject known facts. Indeed, the real remaining question is not whether this was an election-connected offense, but just how high in the union the culpability runs. What Secretary Shultz did in his testimony was to challenge the F.B.I., the United States Attorney and the Grand Jury; only a guilt-stricken man would deliberately undercut the enforcement efforts of his own Government.

* * * *

Before concluding this statement, Mr. Chairman, we would like to call to your attention one paragraph from our letter of February 21, 1970, to Mr. Shultz. That paragraph reads as follows:

> "Mr. Secretary, you and your advisers are apparently the only people in the whole United States who do not know how rotten things are in the Mine Workers. Why do you refuse to see what even a blind man could not miss? Is it the influence of Mr. Usery who denounces the Yablonski group with allegations that they accepted money from Walter Reuther and the UAW (a false statement which Joseph A. (Chip) Yablonski under oath denied as "garbage" before the Senate Labor Subcommittee)? Is it your lawyers' prattlings about "volunteerism" in the labor movement, and Mr. Silberman's desire to play the wheeler-dealer role with the UMWA? Or is it your own personal desire not to take any steps of which the powerful UMWA might not approve? We do not know your motivation for inaction and apathy in the face of tyranny and violence, but there is one thing we do know: We shall keep up this fight, whatever you do, because the American people will not forever tolerate bureaucratic indifference to

> UMWA corruption any more than they would in the case of the Teamsters. The Yablonski supporters will *never* let you sweep this mess under the rug."

Sadly enough, Mr. Shultz's testimony was just such a deliberate effort to do what we feared – to try and sweep the mess of the United Mine Workers of America under the rug. You and your Subcommittee have the opportunity to prevent this from happening. We have been disappointed in the investigation to date, but we hope and trust that you and your Subcommittee will soon undertake a real investigation in the great tradition of the United States Senate.

In sum, Mr. Chairman, we are shocked and appalled at the Secretary's distortions, innuendoes, and fabrications. It is frightening to believe that such a high public official would resort to such conduct to justify his unjustifiable actions. Your Subcommittee unfortunately did little to clear the air while Messrs. Shultz, Usery and Silberman were before you. At least you could have required the Secretary and his associates to go under oath as have all other witnesses.* But, in any event, we reiterate our request to appear before the Committee, hopefully, *simultaneously with the Secretary*, so that the real facts can be made known. In the event the Secretary should decline a new invitation, we ask that you recommend to the President that all of the Mine Workers' investigations be conducted by a crime task force under the jurisdiction of the Attorney General. Surely, you would agree that Mr. Shultz and the Labor Department have demonstrated an unwillingness to enforce the law which Congress entrusted to them. They should not be permitted to impede and frustrate the work of the Justice Department

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* To highlight this failure, we have sworn to this rebuttal.

and the F.B.I., which appear to be genuinely concerned with cleaning up this union.

/s/ JOSEPH L. RAUH, JR.

/s/ JOSEPH A. ("CHIP") YABLONSKI

[Notarial Certification, dated May 25, 1970]

[EXHIBIT C-2 TO MOTION FOR LEAVE TO INTERVENE]

UNITED STATES SENATE
COMMITTEE ON LABOR AND PUBLIC WELFARE
WASHINGTON, D. C. 20510

June 24, 1970

I am submitting to each Labor Subcommittee member this status report on our activities respecting the United Mine Workers of America and related matters. This report comes at a time of increasing problems in this general area and a rapid development of a complex of conditions troubling many of the workers in our Nation's coal fields.

These conditions – which have been reflected in walkouts by a number of coal miners in several states – include dissatisfaction with the pace of the Government's various investigations and lawsuits involving the United Mine Workers of America, and with the administration of the Federal Coal Mine Health and Safety Act of 1969; disapproval of the recent nomination of Dr. J. Richard Lucas to be Director of the Bureau of Mines; and the assertion of various coal miner grievances against the UMWA.

UNITED MINE WORKERS INVESTIGATION

Immediate priority under S. Res. 360 has been given thus far to the circumstances surrounding the UMWA election of December, 1969 – an area in which we are exercising a legislative oversight function with respect to the Labor and Justice Departments' administration of the Labor-Management Reporting and Disclosure Act. We are, however, also actively pursuing the broad welfare and pension plan study authorized by S. Res. 360, including at present the preparation, with the minority staff, of a detailed questionnaire to be sent to a large sample of pension plan administrators.

Secretary of Labor Shultz appeared before the Subcommittee on May 4 to report on actions taken by his Department with respect to the UMWA election, as well as other matters concerning the UMWA. His appearance followed the filing of suit to set aside that election. This suit, which resulted from a 200-man investigation that began on January 8, was based on several grounds – including the use of Union funds, publications and facilities on behalf of the incumbents, and various statutory violations relating to the balloting process. In subsequent pleadings, the Secretary has referred to several hundred instances of improper activity. In addition, the Secretary has sought an injunction to prohibit further expenditures of Union funds without the maintenance of proper records to substantiate the actual use made of such funds.

If properly pursued, this lawsuit should result in some of the questions raised by the UMWA election being resolved through judicial proceedings. However, under present circumstances, many of the allegations we have received concerning this election will not be resolved judicially, for the Secretary reported to us that certain charges – which were investigated either by the Labor Department of the FBI – could not be substantiated. He further reported his

view that certain other charges did not constitute violations under current interpretations of the law.

In view of continuing public concern over charges that were not substantiated by the prior investigations, I believe that investigation in those areas by this Subcommittee is essential, and the work of the staff has been directed accordingly. The subjects referred to include charges of violence or threats of violence, as well as various allegations of misuse of Union funds – including the hiring of dust committeemen, organizers and others for Union political campaign purposes. In the course of their inquiry into such matters, our investigators have also been receiving evidence of violations which appear not to have been covered by either the Labor Department or the FBI, and these, too, are being thoroughly explored. Our investigative activity has included the issuance of a number of subpoenas seeking financial records and information from officials of the UMWA, the National Bank of Washington, and various persons connected with the Boyle campaign.

At the present time, eight professional staff members, under the direction of Salvatore J. Arrigo, a former deputy assistant general counsel of the NLRB, are working on our investigation. In addition to field investigators currently examining election-related charges, the staff includes two investigative-auditors who have been examining the books and records of the UMWA Welfare and Retirement Fund, and two actuaries who have been making an actuarial study of the Fund in order to determine the impact of the pension increase which W. A. ("Tony") Boyle put through at the beginning of his campaign and which has figured prominently in our earlier hearings. Commitments are currently being completed to bring additional investigators on board.

In our inquiries, we have endeavored to take full account of other investigative activity, as well as a great deal of pending litigation involving the UMWA or its Welfare and

Retirement Fund, in order to obtain a maximum amount of background information, avoid fruitless duplication of effort, and insure that our own efforts do not interfere with the ongoing investigations which the FBI is conducting in several areas.

I should point out that Secretary Shultz's report to the Subcommittee raises a number of questions of statutory interpretation or enforcement policy, concerning which I find myself in disagreement:

1. One matter of major concern, of course, has been the refusal of the Department to investigate, prior to the murder of the Yablonski family, the allegations of improper activity which had been repeatedly brought to its attention during the period from July through December of 1969.

In his report to the Subcommittee, the Secretary took the position that, except for allegations of violence, it is legally contrary to the Labor-Management Reporting and Disclosure Act for the Department to investigate possible violations of the law during an election campaign. I believe the Secretary's view is erroneous, and represents a reversal of the legal position held by the Department since the Act's inception in 1959. Section 601(a) of the Act expressly states that the Secretary has power to investigate whenever he believes it necessary to determine whether any person has violated or is about to violate the Act. While I can understand the Department's long-established *general policy* of not conducting such investigations in advance of an election, it seems to me this policy permitted an investigation when information brought to the Secretary's attention indicates a pattern of irregularities which, if allowed to continue, will inevitably taint the election. In such cases, even though the Secretary could not actually go to court until after the election, a display of the Department's concern, manifested through investigative activity, may well serve to discourage continued violations of the law, as well as preserve evidence for later use in court, should that be

necessary. I do not believe Congress intended that the Secretary's hands should be tied in the fashion of the Secretary's current interpretation.

2. One of the election charges with which I have been particularly concerned in our prior hearings, relates to the $30 million annual pension increase engineered by W. A. ("Tony") Boyle at the beginning of his campaign last June. This increase was not obtained through a collectively bargained increase in employer contributions. Rather, it was to be met from the reserves of the UMWA's Welfare and Retirement Fund – a Fund which was already scarcely holding its own in terms of annual income and outgo. This manipulation of the Fund, which Boyle relied on repeatedly to appeal for pensioner votes during his campaign, seems to have been one of the most decisive factors in the UMWA election. A Subcommittee staff analysis, based on data subpoenaed from the Union, indicated 93% of the voters in the all-pensioner locals voted for Boyle. Since the pensioners comprise 70,000 out of a total UMW membership of 185,000, the substantial impact on the election is self-evident.

It appears that the Labor Department did not adequately appreciate the significance of this situation, and readily concluded that no violation of the Act was involved. In my view, however, the increase in the pension payments brought about by Mr. Boyle for obvious political purposes, represented a substantial and improper interference with the electoral process within the meaning of the statute (Sec. 401(e)).

I have felt this situation to be of sufficient importance to direct an actuarial study of the Fund in order to project the effect this pension increase would have. The actuaries who have undertaken this work for the Subcommittee have analyzed available data pertaining to the Fund's future royalty income, as well as its projected payments

for future medical, death and pension benefits. On the basis of their analysis thus far, I believe their final report will be found alarming by the thousands of miners who are dependent upon the continued solvency of this Fund.

3. In March, 1969, the Department began a financial investigation of the UMW and found that funds were being spent by Union officials without maintaining the required underlying records which would document or permit verification of the authenticity of such expenditures. Again, when the Department undertook to investigate the election, and inquired into the uses made of the startling amounts of money which had been transferred by UMWA headquarters in Washington to selected districts during the campaign, it again was stymied by the lack of records which would establish what actually had been done with these hundreds of thousands of dollars.

Thus far, the Department has simply sought an injunction to require proper records to be kept in the future. However, since there seems to have been a deliberate policy of sparse record-keeping that makes it impossible to determine that Union funds have been legally expended, I believe the Government should initiate criminal proceedings under Section 209 of the Act, which makes the willful refusal to maintain prescribed financial records a criminal offense. This is a case where it would appear to be in the public interest to prosecute for failure to maintain records, even though the Government may not obtain sufficient evidence to invoke the embezzlement section (501(c)) of the Act. It is important to note in this regard that an individual convicted of failure to maintain required records would thereby become legally disqualified from holding union office (Section 504).

4. I believe that the Department having asserted the use of the United Mine Workers Journal for campaign purposes as one of its grounds for overturning the election, should

be more alert to the use that is still being made of the Journal. This point was raised with the Secretary when he appeared before the Subcommittee and has again been raised in subsequent staff discussions with the Department. I am hopeful that the Department will request appropriate court relief, so as to preclude the possibility that any rerun election ordered by the court will not be improperly affected.

5. The Departments of Labor and Justice appear to have taken an unwarrantedly narrow view of Section 610 of the Act, which makes it a crime for any person to use force or violence in order to interfere with a union member's rights – including the right "to express any views, arguments or opinions." In reporting on the episode in June, 1969, when Mr. Yablonski was physically attacked at a meeting in Springfield, Illinois, the Secretary and his Solicitor stated that the man eventually identified as the attacker explained that he was not paid or induced by UMWA officials to assault Mr. Yablonski, but that it was strictly a spontaneous action resulting from something Mr. Yablonski had said in his speech with respect to a matter of union affairs. In the Government's view, we were told, this did not constitute a violation of Section 610.

This view is contrary to the terms of Section 610 and at least one Federal court of appeals decision, United States v. Roganovich, 318 F.2d 167 (7th Cir., 1963), and I believe our Committee should appropriately indicate its disagreement. Whatever practical problems might now stand in the way of successfully prosecuting this particular individual, the legal interpretation given to us by the Labor Department representatives should not remain unchallenged, lest it encourage similar actions by others in the future.

6. In my view, the Labor Department dismissed far too abruptly the objection that one-half of the UMWA's 1200 locals exist in violation of the Union's own constitution since they have less than 10 working members, and that members of such locals should have been transferred to, and required to vote from, properly constituted locals. The UMWA's constitution is quite clear on this score and, in view of the testimony we have already heard regarding the abuses to which these "bogus locals" are subject, I strongly disagree with the Secretary that any violation was at most a "technical" one.

While we will be hearing further evidence bearing on some of the foregoing matters, I thought it important to bring them to your attention at this time, as I believe they are issues on which the Subcommittee and the full Committee will need to make a judgment.

COAL MINE HEALTH AND SAFETY PROBLEMS

Since the signing on December 30, 1969, of the Coal Mine Health and Safety Act, the Administration, through a series of unfortunate decisions in certain matters, and its failure to act in other areas, has allowed a situation to develop, which on the surface, appears chaotic.

After surveying the first five months of this Act's operation and observing reaction within the industry, I must conclude that several very serious problems exist which are increasing in scope with each passing day:

1. Staffing at the Department of the Interior

The Department of the Interior undertook a major reorganization of the Bureau of Mines (both structurally and in terms of personnel) during the three-month period provided

under the Act for implementation. This reorganization was the second in little more than a year. As part of this latest reorganization, the Director of the Bureau, John O'Leary, was summarily dismissed the weekend prior to his scheduled testimony before the House Appropriations Committee; the Bureau's black lung expert, Henry Doyle, was reorganized out of his position and has refused a new position because he believed that the reorganization was detrimental to proper implementation of the Act. Now, the Administration has nominated as the new Director an individual whose suitability for this most difficult assignment has been subject to serious question.

2. Regulations Issued by the Department of the Interior

The Department of the Interior has issued a series of regulations, some in conjunction with the Department of Health, Education and Welfare. These regulations were issued either after the deadlines imposed by Congress, or only a day or two before they were to become effective. They were published as final regulations under procedures which did not provide opportunity for interested parties to comment. The regulations include several noticeable and serious deficiencies, some of which – such as the penalties section – have led to an emotional reaction in the coal fields, which is deterring rather than aiding compliance.

The Department of the Interior began to implement its regulations by what it calls "partial but representative (PBR)" inspections on March 30, 1970. For each notice of violation, it also issued a "notice of penalty," averaging ten such notices per mine inspected. The notice of penalty was provided under Interior's new regulations, and prescribes a schedule of penalties (beginning at $25 per violation)

bearing no relationship to any of the criteria for penalties established in the Act (*e.g.*, size of mine, wilfulness, seriousness of violation, effort of operator to comply). Since the publication of these regulations, Interior has modified the fee schedule, but has not corrected any of its defects.

Approximately 75 operators of small mines obtained a temporary restraining order against those portions of Interior's regulations containing the penalty schedule and safety standard requirements where the equipment, technology, personnel or materials required for compliance are not available. This order, in effect until a three-judge constitutional court convenes in September, has resulted in a substantial part of the statute not being enforced. In my judgment, the Government did not engage in the rigorous defense against this lawsuit that concern for safety of the miners required. Moreover, the Interior Department has, without justification, treated the restraining order as industry-wide instead of limited to the small mines bringing the lawsuit. The effect of this action has been to cut back on enforcement of the statute.

Proposed amendments to the Act on both the House and Senate sides have been introduced to postpone the assessment of penalties until September 1, 1970, to amend the standard requiring brakes on locomotives and haulage cars and to modify the definition of working face. On the Senate side, the amendment was offered by Senator Bennett for himself, Senator Cook and Senator Smith (Ill.), (S. 3733, May 1, 1970), and has been referred to this Committee. On the House side, it was offered by Congressman Burton (Utah) and Congressman Brock (Tennessee). In my opinion, no basis has been established for such action by the Congress, particularly since the problems involved can be dealt with by the Interior Department under its existing authority.

3. Reaction of the Industry

In addition to obtaining the court injunction, industry reaction to the new law and its administration has included closing mines (approximately 200 closed within two weeks of the effective date of the Act), and announcing price increases and further contemplated increases for coal, which are reported by the *Wall Street Journal* to range as high as 30%. Most of this increase is alleged to be a result of the added costs brought on by the Health and Safety Act. The newspapers are also reporting with increasing frequency statements by industry leaders, and others, attributing expected blackouts and brownouts this summer to shortages of coal caused by the new safety law. My survey and investigation of the power shortage warnings indicate that possible power failures would be largely due to the utility industry's inadequate generating capacity, as well as a shortage of coal-carrying railroad cars, and other causes not related to the new health and safety requirements.

4. Nomination of Dr. J. Richard Lucas

President Nixon has nominated Dr. J. Richard Lucas of West Virginia to be Director of the Bureau of Mines to replace John O'Leary. Shortly after announcement of the nomination, criticism was voiced by Congressman Saylor (R-Pa.) and Congressman Hechler (D-W. Va.) Since then, a great deal of press attention has focused on opposition to the nomination, and a number of coal miners have conveyed to me their deep concern that Dr. Lucas is not an appropriate choice. The opposition to his nomination is based primarily on charges that:

1). the scholarly credentials which supposedly qualify him for this position are seriously flawed,

2). he has a long history of close ties to the coal industry, coupled with a reported $200,000 investment in mining interests, and

3). he has shown no evidence of the leadership potential and strong-mindedness which will be absolutely essential to the successful performance of this very demanding position.

5. Reaction of the Coal Miners

The Subcommittee has had several visitations from groups of coal miners urging the Subcommittee to take whatever steps are necessary to protect their health and safety and to ensure union democracy. Regarding health and safety, these miners link the nomination of Dr. Lucas with the demonstrably poor record of Interior in implementing the Act. The general attitude they express is that they were better off under the old, inadequate safety law than under the improperly administered improved law, and this attitude has been reflected in the walkouts which have occurred during the past week.

In view of the foregoing circumstances, I have scheduled a Subcommittee trip to the coal fields for June 25 and 26, about which you have been previously notified, in order to obtain further first-hand information. At the conclusion of this trip, I believe a determination can be made as to appropriate action by the Subcommittee respecting the administration of the Coal Mine Health and Safety Act.

With kindest personal regards,

Sincerely,

/s/ HARRISON A. WILLIAMS, JR.
Chairman,
Subcommittee on Labor

[EXHIBIT C-3 TO MOTION FOR LEAVE TO INTERVENE]

Discussion of Senator Williams' "Status Report" of June 24, 1970 Concerning a Senate Labor Subcommittee's Investigation of Activities of the United Mine Workers

On June 24, 1970, Senator Harrison A. Williams, Jr. submitted to each member of the Senate Labor Subcommittee a "Status Report" of the activities and interim conclusions of that committee in investigating the United Mine Workers and the Department of Labor's activities vis-a-vis the UMW. That status report makes 6 specific criticisms of Labor Department actions and policies in regard to the UMW election case. Most of these points were dealt with in detail in Secretary Shultz' testimony of May 4 but a reexamination of these issues is necessary in order to prevent misunderstanding.

In summary, Senator Williams' criticisms, and the Department's position are as follows. A more detailed discussion of each point is attached.

1. The status report states that the Department of Labor should have investigated alleged violations of the elections provisions of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter referred to as the LMRDA or the Landrum-Griffin Act) during the election campaign.

> The Department has *never* conducted an investigation of an election during the campaign. This is a sound policy and is required by the nature of the statute.

2. The status report states that Mr. Boyle's action to increase pension benefits is an "improper interference" with the election process.

The Department has concluded that action, by a union officer (even if unwise or motivated by a desire to gain support), during a campaign, to improve the economic condition of his members does not, by itself, violate the LMRDA.

3. The status report suggests that criminal proceedings be initiated for a willful refusal by UMW officials to maintain required records. Senator Williams has also suggested that criminal proceedings be initiated because certain financial reports have not been filed on time.

The Department does not have the necessary evidence to support a criminal action for "willful" violation of the record-keeping requirements or for "willful" refusal to file financial reports.

4. The status report suggests that the Department should seek "appropriate relief" for alleged current misuse of the UMW Journal.

To the extent that the status report suggests that the UMW Journal should be neutral until the court orders a new election, it implies that the Government should oversee the contents of the publication. This is difficult to square with traditional notions of freedom of the press.

5. The status report suggests that criminal prosecution should have been sought under section 610 of the Landrum-Griffin Act fot the physical attack made on Mr. Yablonski in Springfield, Illinois.

The Department of Justice concluded there was no sufficient basis to prosecute criminally under section 610 which requires proof that the assault on Mr. Yablonski was made "for the purpose of" interfering with his rights under the Act.

6. The status report asserts that members of locals having less than ten working members "should have been transferred to, and required to vote from properly constituted locals."

> There is no contention that persons voted who should not have. Moreover, the LMRDA does not authorize the Secretary of Labor to compel a transfer of union members from one local to another. Such an extraordinary power would, in effect, authorize the Department to reorganize unions.

1. The status report states that the Department of Labor should have investigated alleged violations of the elections provisions of the LMRDA during the election campaign.

The Department of Labor has concluded that an investigation of election violations during the course of a campaign is not contemplated by the statute. In the eleven years since the law was enacted the Department has never investigated during the course of a campaign despite many requests to do so. This practice has, in the past, been justified as a policy consistent with the purposes of the statute. It is merely a change of emphasis to call it a practice required by the statute.

In examining the Department's authority to investigate during the course of a union election campaign it is necessary to consider the interrelationship of Title IV "Elections" and section 601.

Title IV of the Act prescribes a three-stage procedure for remedying violations of the statute's election provisions. First, the invocation of the internal union remedy; second, investigation by the Secretary; and third, court action to set aside the election and conduct a new one under the

supervision of the Secretary. The statute gives the Secretary no authority to challenge violations occurring before the election is held or before the internal remedies have been exhausted. This is no legislative accident. It reflects the Congressional commitment to minimize the extent of Government intervention. The bill's supporters repeatedly stressed that its language should be read as authorizing only the most minimal Government intervention in union affairs. As the Senate Labor and Public Welfare Committee said when it reported out S. 1555, three "principles" had guided its deliberations. And the first of these principles was the maintenance of minimal Government interference. Specifically, the Report stated:

> The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective bargaining agents.[1]

The Congressional policy of limited governmental intervention into union elections under Title IV on first

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[1] See the Senate Labor and Public Welfare Committee Report. *U.S. Code Congressional and Administrative News*, 1959, p. 2323, Vol. 2. The other two principles the report emphasized were the avoidance of "paternalistic" government regulation and the institution of direct remedies for abuses, without applying "destructive sanctions" to the unions. See also, *Wirtz v. Local 153*, 389 U.S. 463.

impression appears inconsistent with section 601 of the Act which, read literally, grants a broad investigatory power independent of the limitations of Title IV.

While two courts of appeal[2] have held that the broad investigatory authority under Title VI is not limited by the express procedural requirements of section 402, one of these courts did recognize a potential conflict between the overall policy of Title IV and an unrestrained use of section 601 during an election campaign.

The Court noted the union's argument that: ". . . if Section 601 is construed to empower the Secretary to investigate Title IV violations prior to the date of an election, the investigation might well unduly influence the outcome of the election" and responded that "Since the investigation in this case was not instituted until after the election had been held, we express no opinion as to the Secretary's power to commence an investigation during an election campaign."[3]

An investigation during an election campaign would raise the very issue which the First Circuit did not decide and which no court has ever decided. From 1959 until today, the sole use of section 601 investigatory authority in election cases has been to collect or preserve evidence regarding elections which have already been held and, therefore, in circumstances in which the outcome of the election could not be affected. Investigatory authority under Section 601 has been used only after the balloting was done – but

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[2] *Local 57 v. Wirtz*, 346 F.2d 552 (1st Cir. 1963); *Wirtz v. Local 191*, 321 F.2d 445 (2d Cir. 1965).

[3] 346 F.2d 552, 555.

before the procedural requirements for a title IV investigation had been met. Under these circumstances, an investigation cannot affect the outcome of the election.

A limitation of investigative power under section 601 in election cases to circumstances which will not unduly influence the outcome of the election is a rational harmonizing of these two different provisions of the statute.

While Section 601, taken alone, might justify a pre-election investigation, this language – like the language of any other provision of any statute – may not be taken alone. It must be read in context and in light of the drafters' purpose, due consideration being given to the ramifications which flow from any particular reading.

Contextually, the placement of the provision and the usage of similar language in numerous other statutes indicates that its purpose was to ensure the availability to the Secretary of the tools which are necessary for carrying out his litigative responsibilities under the substantive sections of the Act.[4] The intention of the drafters supports this contextual analysis, for in both the House and the Senate Committee reports, it is noted that section 601 merely restates the authority to investigate which is given the Secretary elsewhere in the Act.[5]

The conclusion drawn from the legislative history is supported by a number of additional considerations.

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[4] See *Oklahoma Press Publishing Co. v. Walling*, 327 US 186 (1946), where similar FLSA language was so interpreted.

[5] The precise word used is "recapitulates." See pp. 2350 and 2449, *U.S. Code, Congressional and Administrative News*, 1959, Vol. 2.

a. Most investigations of union elections reveal some violations of the Landrum-Griffin Act. Some of those violations are more significant than others. Some of the violations are committed by the unsuccessful candidate. The Congress was conscious of these realities and authorized the Labor Department to bring action *only* where it is determined that the violations "may have affected the outcome of an election." Can one attribute to the Congress an intent that the Labor Department should investigate before an election and then wait until afterward to determine if the violation could have "affected the outcome" of the election?

There are an estimated 20,000 union elections each year and it is not uncommon for one of the partisans in a hotly contested union election to make allegations of a "pattern of irregularities which, if allowed to continue, will inevitably taint the election." If it were incumbent upon the Labor Department to conduct an investigation each time such allegations were made during the course of a union election, the investigatory staff having the responsibility would have to be radically expanded despite the fact that the Department could not act upon any such investigation unless and until valid complaints were processed and left unresolved by the unions and a determination was made that the allegations, if substantiated, might have affected the election outcome.

b. The Government must, of course, avoid taking sides in a union election, or giving the appearance of doing so. If the Department of Labor

were allowed to and did investigate during the pre-election period, it might, by the mere fact of investigation alone, be interpreted as taking the side of the party alleging violations. The investigation might become the central issue in in the campaign to the exclusion of the substantive issues of genuine importance to an informed electorate.

Further, in the pre-election probing for facts, investigators must ask questions which may often raise at least suspicions in the minds of prospective voters that the Department of Labor was taking sides.

The election influence of a Government investigation is compounded when one considers that at the conclusion of the investigation the Department of Labor may only report its findings or remain silent. Either course carries significant implications of "whitewash," "partisanship," etc., and more deeply embroils the Department in a campaign which is supposed to be between the candidates.

It is a recognition of these clear facts of political life that has led the NLRB to await the outcome of an election before investigating alleged misconduct during a representation election campaign.[6] It seems unlikely, particularly in light of

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[6] When an unfair labor practice charge is filed with the Board, the election process is stopped, an investigation is conducted and a remedy effectuated, unless the charging party waives his right to this procedure and desires to go forward with the election. Only then is the election process recommenced. See *Twenty-Ninth Annual*

(Cont'd.)

the Government's preclusion from anything but post-election functions in Title IV, that an informed Congress could have intended anything else here.

c. It is also significant that under Title IV the Department's post-election investigation findings of violation must be proved in court before an election can be overturned. The Congress specified that the Department of Labor was not unilaterally to impose its judgment concerning election conduct upon the union. However, if the Department were to conduct an investigation prior to the election, that investigation itself, plus any announcement of its findings would clearly have an impact, an impact unilaterally created by the Department without the court review required by the Congress in Title IV.

Fundamental issues of national labor policy are involved here. If the Congress believes that violations of the election provisions of the Act should be investigated by the Department before the election is held, it should not only provide for such investigations but also vest the courts with jurisdiction so that the Department's findings may be adjudicated and appropriate relief granted, or if the Congress wants the Department to supervise union elections generally, it should express its will in legislation.

2. The "Status Report" expresses particular concern that Mr. Boyle's pre-election vote to increase pension benefits

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Ftn. 6 (Cont'd.)
Report of the NLRB, p. 49. Thus, the Board believes it impossible to fairly continue an election campaign at the same time it is investigating charges of illegality relating to the campaign.

for union members was an improper interference with the election process, and, as such, violated sec. 401(e) of the Landrum-Griffin Act.

Section 401(e) states, in pertinent part, that a union member shall have the right to participate in the union's electoral process "without being subject to . . . improper interference of any kind by such organization or any member thereof." It is contended that Boyle's vote amounted to improper interference.

The background of the pension increase, however, does not permit such an easy judgment, for there was among the union membership widespread sentiment in favor of a pension increase. At the 1968 convention, 242 resolutions were introduced in favor of it. Boyle went on record at the convention as also being in favor of it, but he did not have the power to implement his views, as he was then not a pension fund trustee. When, upon the death of John L. Lewis, he did become a trustee, he voted his views.

In addition, the report misconstrues the operation of the UMW pension fund. The fund is governed by three trustees – one from the union, one from management and one neutral. Boyle could be outvoted at any time. The trustees could act today, if they so desired, to change benefit levels. The fact is that pension levels were not increased by Boyle, but by a majority vote of the trustees.

The legal question is whether the increase in pensions was "improper interference" with the election.

The legislative history indicates the term "improper interference" is limited to interference that amounts to coercion or intimidation. The House Committee stated in its

report that the purpose of section 401(e) was to "forbid intimidation of voters and denial of the right to vote."[7]

In addition, the *Exchange Parts* doctrine, which gives a broad reading to the term "interference" in the Labor Management Relations Act, is not applicable. In *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405 (1964), the Supreme Court held that an employer interfered with the employees' rights by granting a raise to employees during an organizing drive. The Court decision was based on the fact that such a raise demonstrates the employer's power. "The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow, and which may dry up if not obliged."[8] That reasoning does not apply to an internal union contest because neither faction has that kind of unilateral power.

But it is not only the lack of unilateral power which makes the *Exchange Parts* analogy a false one. In a representation election, the contest is between the employer and the union – and the employer will remain powerful regardless of who wins the election. In a union election if one side is defeated, its power ends and, therefore, even a demonstration of power before the election is not necessarily an intimation of what will happen after the election.

There is a more basic question, too: What kinds of actions are permissible in an attempt to convince voters to vote one way or the other? No one would contend that

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[7] *U.S. Code, Congressional and Administrative News,* 1959, Vol. 2, p. 2439.

[8] 375 U.S. at 409.

the Act proscribed campaigning and attempts by candidates and their supporters to influence the voters to vote for their candidate. If one of the candidates holds a position which provides him with the power to enhance the economic benefits of the members, is he precluded from doing so during the period of the union's election campaign? If the Labor Department were to decide that a pension raise, such as is involved in the present case, constitutes "improper interference", would not an incumbent candidate's negotiation of a raise in the wage scale during the campaign period also be a violation of the Act? Statutory language should not be strained to reach such an extraordinary and undesirable result. The Labor Department's interpretation is supported by sound policy and the legislative history.

If there is serious Congressional concern about the misuse of pension trusts, as there is Administration concern, it would be appropriate to expedite the passage of the Administration's proposed Employee Benefits Protection Act. That bill would require pension fund trustees to act with prudence and "solely in the interest of the participants and beneficiaries of the fund."

3. The "Status Report" suggests that criminal proceedings be initiated for a willful refusal by UMW officials to maintain required records. Senator Williams has also suggested that criminal proceedings be initiated because certain financial reports have not been filed on time.

There is now pending in the Federal courts a civil action brought by the Secretary of Labor to enjoin the UMW's violations of the reporting requirements of the Act. Without becoming involved in a detailed discussion of this case or other investigations which are being currently undertaken, it is important to point out the background of this matter.

In March 1969, before Mr. Yablonski's announcement of his candidacy, the Department of Labor began an investigation of the UMW's financial records. Violations were found and the union was officially notified of its deficiencies.

On March 5, 1970, the Secretary of Labor brought a civil action against the UMW which sought, among other things, a preliminary injunction in relation to the alleged record-keeping violations.

Subsequent to the complaint, the Department filed a motion to require the union to produce its books and records for the years 1967, 1968, and 1969. This motion was recently granted and the Department's auditors will be inspecting the pertinent material shortly.

The "Status Report" suggests, however, that in addition to this action, there should be initiated a criminal proceeding for the willful refusal to maintain the required records.

The Government's evidential burden is much greater in a criminal case than in a civil one. In a civil action, the Government's burden is to prove the allegations by a preponderance of the evidence. In a criminal case, the allegations must be proved beyond a reasonable doubt. Furthermore, a criminal conviction requires a showing of "willfulness" which would be especially difficult in the UMW case because their record-keeping procedures apparently have changed little since the early days of John L. Lewis and the Department has no evidence establishing "willfulness."

The most important goal is getting accurate records. The Department has pursued that goal in a diligent, direct manner.

The UMW, in fact, has been late in filing its financial reports. Each year, however, more than 10,000 delinquencies

and late filings occur. Aside from the fact that such a filing does not itself constitute a sufficient offense to warrant criminal prosecution without evidence of "willfulness", the result of a position to the contrary would require the Department to proceed criminally against a vast number of American labor unions.

4. The "Status Report" alleges that the UMW Journal is being misused and suggests that the Department of Labor seek "appropriate relief."

The misuse of the UMW Journal forms part of the basis for the civil action brought by the Department of Labor against the UMW on March 5, 1970 and the Department has requested that the court grant appropriate relief. The issues of the UMW Journal published since the date of the election are presently being examined, and consideration is being given as to whether appropriate interim relief should be requested in the pending action. However, the legal, and indeed the constitutional problems are very difficult and are illustrated by the holding in a case brought by Mr. Yablonski during the election campaign, in which the court found itself precluded by the First Amendment guarantees of free speech and press from granting any relief which would interfere with the free operation of the Journal. [*Yablonski v. UMWA*, 305, F. Supp. 868 (D.C., Sept. 15, 1969)]

5. The "Status Report" states that an indictment should have been issued, pursuant to sec. 610 of the Landrum-Griffin Act for the physical attack made on Mr. Yablonski in Springfield, Illinois. The report cites the case of *United States v. Roganovich*, 318 F.2d 167 (7th Circuit, 1963), as authority for this assertion.

Section 610 of the Act makes it a crime for any person to use force or violence, or the threat of force or violence,

"to restrain, coerce, or intimidate . . . any member of a labor organization *for the purpose* of interfering with" his rights under the Act. (emphasis added)

Section 101(a)(2) establishes, as one of these rights, the right of every union member "to express any views, arguments, or opinions; and to express at meetings of the labor organization his views . . . upon any business properly before the meeting."

On June 28, 1969, Mr. Yablonski spoke at a campaign meeting in Springfield, Illinois. As the meeting was breaking up, Mr. Yablonski was hit on the chin and knocked unconscious by a union member. The FBI promptly investigated the incident. Its investigation determined that the assault was the spontaneous action of a man who had disagreed with Mr. Yablonski's views on allowing pensioners to vote; he was not paid or otherwise induced to commit the assault. On the basis of the facts revealed, the Department of Justice concluded that there was no violation of section 610 and that no prosecution should be undertaken.

The case of *United States v. Roganovich* does not alter this judgment. *Roganovich* concerned an assault at a union meeting which occurred after a member challenged the statement of the local's business representative. The purpose of the assault was to keep the member from expressing his views. To obtain a conviction under section 610, the Government must be able to show not only that the assault took place, but that the purpose of the assault was intimidation. That purpose could not be shown in the Springfield incident. The assailant had become riled up – emotionally distraught – over Yablonski's position relating to voting rights for pensioners.

That the assault took place is undeniable; that it was violative of state and local law is also highly probable. But

an argument between two union members over union policy which results in an altercation is not, just because there was an altercation, a violation of Federal law.

6. The "Status Report" states that the Department of Labor dismissed too abruptly the problem of "Bogus Locals" (*i.e.*, locals having less than 10 working members). The report contends that the members of one-half of the UMWA's 1200 locals should have been transferred to, and required to vote from, properly constituted locals. There is no contention here that persons voted who should not have; it is only contended that they should have voted at a different polling place.

This allegation draws its chief appeal from the use of the words "bogus" or "bogey." No one has yet argued that the members of these locals are not entitled to vote under the UMW constitution and under the Act. The argument, therefore, is only *where* the members of these locals should vote. If the locals are not legal, the members would just have been transferred to other locals and voted at a different polling place. Remove the label "bogus" local and the issue falls into perspective.

These "bogus locals" are locals which have fewer than ten working members. Article XIV, Section 1 of the United Mine Workers' Constitution provides that "Local Unions shall be composed of ten or more workers, skilled and unskilled, working in or around coal mines, coals washeries, coal processing plants, coke ovens, or in other industries designated and approved by the International Executive Board, but seven members shall be a quorum for Local Union." Section 19 of that same Article provides: "When a mine is abandoned indefinitely and all the members of the Local Union having jurisdiction over it have gone to work elsewhere, the Local Recording Secretary must notify

the District Secretary of the fact, and the District Secretary must collect the charter, seal, moneys, books, supplies, property, including real estate, belonging thereto and notify the International Secretary-Treasurer." Section 21 of that Article provides: "If any mine or colliery is permanently abandoned, or should any Local Union for any cause disband, or should its charter be revoked, the charter and all moneys, supplies and property, including real estate belonging thereto, shall be taken over by the International Union; provided, that any remaining members of such Local Union in good standing shall be given transfer cards."

The Union had always interpreted these provisions of its Constitution as requiring at least ten working members before a local could receive a charter, but did not require that if a chartered local ends up with fewer than ten working members, its charter must be revoked. The LMRDA does not, of course, contain any authorization for the Government to compel the transfer of members of one local union to another local. The authority to reorganize the internal organizational structure of unions would be such an extraordinary power that it would clearly require new legislation. The Department of Labor has reviewed this interpretation and has determined that it is not arbitrary.

[EXHIBIT D TO MOTION FOR LEAVE TO INTERVENE]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH A. YABLONSKI, *et al.*, *Plaintiffs,* v. UNITED MINE WORKERS OF AMERICA, *et al.*, *Defendants.*	Civil Action No. 3436-69

COMPLAINT FOR ACCOUNTING, RESTITUTION AND DAMAGES FOR VIOLATION OF 29 U.S.C. § 501

1. This is an action for an accounting, restitution, and damages. Jurisdiction is founded on the District of Columbia Code, §§ 11-521 (1967 ed.) and on 29 U.S.C. Sections 185, and 501(a) and (b), and on 28 U.S.C. Section 1331. The matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs.

2. Plaintiffs, Joseph A. Yablonski, Karl Kafton, Richard Weaver, John Wnek, Harry Elmer Brown, P. G. Gillespie, Harry Patrick, Arthur Nelms, George R. Thomas, Mike Trbovich, Joseph Daniels, and Marion Pelligrini, are individuals and members in good standing of the United Mine Workers of America (hereinafter sometimes referred to as "UMWA"). They bring this action on their own behalf, on behalf of the UMWA and on behalf of all other members of UMWA, all of whom have a joint and common interest in the subject matter thereof.

3. Plaintiffs are suing individually, and also as representatives of all UMWA members in whose welfare and interest it is to obtain an accounting, restitution and all other relief required to devote UMWA funds and property exclusively to the welfare and interest of the general UMWA membership. The number in this class is about 200,000 and they reside and work throughout the United States and Canada so that it is impracticable to bring them all before this Court. Plaintiffs assure the adequate representation of all. This is, therefore, a proper class action under Rule 23 of the Federal Rules of Civil Procedure.

4. Defendant, United Mine Workers of America, whose principal office is located in Washington, D.C., is a labor organization within the meaning of Section 3(i) and (j) of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter sometimes referred to as "LMRDA") (29 U.S.C. 402(i) and (j)). Although UMWA is named as a defendant, this action is brought in its behalf and in behalf of all its members as a group.

5. Defendant, W. A. ("Tony") Boyle, is currently the International President of UMWA, a position he has held since January 1963. Before that time, from April 1960 to January 1963 he served as International Vice President. As International President and Vice President, Boyle was at all times referred to herein as an officer within the meaning of the Act. He is complained about in his official capacities and individually. The duties and powers of the International President are set forth in Article IX of the UMWA Constitution.

6. Defendant George J. Titler, currently the International Vice President of UMWA, has held this post since January 1966. He is complained of as International Vice President and individually. The duties of the Vice

President are set forth in Article IX of the UMWA Constitution.

7. Defendant John Owens, the International Secretary-Treasurer of UMWA was at all times referred to herein an officer within the meaning of the Act, having held this post for 21 years. The duties of the Secretary-Treasurer are set forth in Article IX of the UMWA Constitution.

8. The individual defendants (hereafter sometimes referred to as the "International officers") have occupied and now occupy positions of trust in relation to UMWA and its members individually and as a group. Said UMWA officers owed to plaintiffs and to UMWA fiduciary duties, including the duty to expend UMWA funds solely for the benefit of the organization and its members and in accordance with the UMWA Constitution. The funds and property of UMWA, including monies contributed by the members in the form of dues and other payments, were and are in the custody of defendants solely in their fiduciary capacity.

9. Section 501 of LMRDA (29 U.S.C. 501) reads:

> "(a) The officers, agents, shop stewards and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with

such organization as an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization . . ."

Plaintiffs allege that the individual defendants have violated the fiduciary duties set forth in Section 501(a) of the Act. More particularly, they are charged herein with, in conflict with the interests of the UMWA and its members: (a) surrendering nine million dollars of UMWA assets, unjustified by any claim of union benefit; (b) misappropriating and misusing union funds for their own personal gain; (c) expending vast sums from the union treasury for their own self-aggrandizement; (d) diverting union funds, property, and resources to reduce the strength of their internal opposition and increase their own power within the union; (e) diverting union funds and resources to advance their 1969 reelection efforts; and (f) failure to account for and pay over to the union outside funds.

A

DEFENDANTS HAVE SURRENDERED 9 MILLION DOLLARS OF UMWA ASSETS, UNJUSTIFIED BY ANY CLAIM OF UNION BENEFIT, IN CONFLICT WITH THE INTERESTS OF UMWA AND ITS MEMBERSHIP

10. Defendants have surrendered millions of dollars of UMWA assets, unjustified by any claim of union benefit, in conflict with the interests of UMWA and its membership.

At the end of 1962, the value of UMWA investments totaled $30,753,023. From January 1963 through December 1968 the International Officers added from union revenues $1,346,477 in new UMWA investments. But the total value of UMWA investments during this period of time, a financial boom period, declined to $24,574,519. This loss of over seven and a half million dollars in six years has not been justified by defendants by any claim of union benefit or interest, and constitutes either grossly reckless conduct by them or misappropriation of union assets for unauthorized purposes.

11. In the fiscal year ended December 31, 1968, the UMWA had an outstanding loan to Lewmurken, Inc., of $1,451,104. Lewmurken, Inc., incorporated in Delaware, has its principal place of business at 900 Fifteenth Street, N.W., Washington, D.C., the UMWA principal headquarters. Lewmurken's major asset is ownership of approximately 30% of the stock of Rocky Mountain Fuel Co., a New Jersey corporation located in Denver, Colorado once owned by Miss Josephine Roche, a trustee of the UMWA Welfare and Retirement Fund. Rocky Mountain Fuel Company went into receivership in 1942, the year Lewmurken came into existence, and the 1968 value of this 30% ownership was only $146,906. Consequently, there is little chance that the loan will ever be repaid. The investment is unjustified by any union purpose. The loan to Lewmurken is purportedly for the purpose of "Business investment and to enhance employment opportunities of union members" and payment of this loan is to be "on demand" (BLMR File No. 000063). Lewmurken has an outstanding loan to Freeport Coal Company of Morgantown, West Virginia. Recently, the land owned by Freeport Coal Company has been leased to Kingwood Mining Co., a non-union coal mining operation. The UMWA, therefore, has

an equitable interest in a non-union operation, in conflict with the interests of the UMWA and its membership.

B

DEFENDANTS HAVE MISAPPROPRIATED AND MISUSED UNION FUNDS FOR THEIR OWN PERSONAL GAIN, IN CONFLICT WITH THE INTERESTS OF UMWA AND ITS MEMBERS

12. The International officers have made a number of unexplained grants, loans, and expenditures of union money. Thus for example in 1967, union attorney Harrison Combs received a grant for $5,000 and union attorney Willard P. Owens, son of defendant Owens, received one for $10,000. And in 1965, without explanation, the union loaned one "John E. Kusik" $39,862. The defendants, moreover, have since 1963 received over $21,000 in contingent fund advances and in 1963 expended $10,000 for "incidental expenses". They have not accounted for these grants, loans, advances and expenses or given any justification therefor.

13. The defendants have used, and continue to use, attorneys on the payroll of the UMWA to defend themselves against justified charges of misuse of union funds and violation of federal law, in clear breach of their fiduciary duty to the union and its members. They have also hired highly-paid outside lawyers to defend them on justified charges of breaches of trust and violations of law and have paid and are paying them substantial fees from UMWA funds.

14. Defendant officers have raided the UMWA treasury to provide themselves with lavish personal benefits unauthorized by the UMWA membership and in conflict with

the interests of UMWA and its membership. Thus, for example, from January 1963 to December 1968, the UMWA has paid $68,894 to the Sheraton-Carlton Hotel in Washington, D. C., to provide Secretary-Treasurer Owens with an expensive two-room suite in which he resides. International officers are regularly furnished with Cadillac automobiles paid for by the union and with special accounts with which they charge the union for their personal expenses. And they have made gifts out of UMWA funds to institutions in their home states to enhance their personal prestige.

15. Defendant officers have, without authorization, diverted funds from the union's treasury to provide themselves with an elite pension plan which guarantees their retirement, at full pay, without any contribution whatsoever by the officers, and have thus unlawfully enriched themselves at the expense of the union. Prior to 1959, International officers' pensions were paid out of general revenues according to an established scale. In 1960, this pension plan was incorporated into an irrevocable trust to comply with the Welfare Pension Act. Paragraph 10 of this trust includes a provision that those who have served as International officers for more than 10 years are to receive their full salary on retirement. To fund this giveaway, $850,000 of UMWA funds was deposited in a special "Agency Account". In about 1963 or 1964 the Internal Revenue Service ruled this pension was discriminatory. Subsequently paragraph 10 was amended, and the special provision relating to International officers was deleted. At this same time, a new elite pension plan was created for "Resident International Officers" for which President Boyle, Secretary-Treasurer Owens and ex-President Lewis alone qualified. To fund this, an additional $650,000 was transferred from the UMWA treasury to the Agency Account

from the union's treasury without any authorization from the membership. The elite pension fund was created clandestinely and has been kept secret from not only the members, but from the International Executive Board, the union's highest ruling body, as well. By means of this plan, the International officers have diverted some $1,500,000 from the union's funds into a special "Agency Account" in substantial part for their own pecuniary benefit, in conflict with the interests of UMWA and its membership.

16. The International officers have padded the UMWA payroll with their own relatives who receive exorbitant salaries and expense allowances from UMWA and who perform services for UMWA, if any, that do not remotely measure up their compensation. Thus, for example, President Boyle's daughter, Antoinette Boyle, had received from UMWA $190,867.03 in salary and expenses from January 1963 through December 1968. During this same period of time, President Boyle's brother, R. J. Boyle, received $186,156.27 from UMWA. Miss Boyle, listed as an attorney, presently receives a salary of $40,000 plus expenses, a salary equal to that of the Vice President of the union. Even the salary paid the General Counsel of the union does not exceed that paid Miss Boyle. Purportedly, Miss Boyle receives this salary for work done in the Billings, Montana, UMWA office. But there is little coal mining in this area – some 250 active coal miners and less than 700 pensioners – and there is no organizing going on. There is, therefore, only the rarest, if any, need for legal advice or work. Secretary-Treasurer Owens has likewise added relatives to the UMWA payroll whose services do not remotely measure up to their compensation. Thus his son, Ronald Owens, the appointed Secretary-Treasurer of District 6, receives about $8,000 more in salary than his highest paid counterpart in any other district; and his son, Willard, a UMWA attorney, earns

as much as the Union's General Counsel. Furthermore, the International President has raised the salary of these and other employees and made grants of additional salaries to them without prior approval or subsequent ratification of the International Executive Board as required by Article X, Section 2 of the UMWA Constitution. In fact, the minutes of the International Executive Board reflect that no reports of these actions were ever made to the International Executive Board for approval. These practices of defendant International officers of UMWA drain the union's treasury for the personal and pecuniary benefit of these officers and their families, and is in conflict with the interests of UMWA and its members.

C

DEFENDANT OFFICERS HAVE EXPENDED VAST SUMS FROM THE UNION TREASURY FOR THEIR OWN SELF-AGGRANDIZEMENT, IN CONFLICT WITH THE INTERESTS OF UMWA AND ITS MEMBERSHIP

17. The International officers have used the funds of the UMWA for their own self-aggrandizement, contrary to the best interests of the union and its membership. From January 1963 to December 1968, $93,375.70 was expended from the union's treasury to pay for photographs of defendant officers. This does not include the photographs purchased for use in the UMW Journal. During this same period of time, $25,000 of UMWA funds were used to purchase portraits of these officers. This money was used to glorify the officers, not to benefit the organization or its members.

18. In connection with the 1964 and 1968 conventions of the UMWA, the International officers expended vast sums of money from the union's treasury for their own

glorification. For example, they spent over one hundred thousand dollars for "Boyle" lighters, pens, gavels and clocks which were distributed to delegates to the 1968 convention. Nor was any reasonable check made on expenditures for the Conventions, and members' money was wastefully squandered in other ways which directly benefitted the incumbent officers. For the 1964 convention, over $390,000 was paid to bands invited to the convention; in 1968 almost $200,000 was spent for this purpose. In addition to providing music, these bands led Boyle-boosting delegations through the aisles of the convention halls, carrying professionally prepared Boyle placards.

D

DEFENDANTS HAVE DIVERTED UNION FUNDS, PROPERTY, AND RESOURCES TO REDUCE THE STRENGTH OF THEIR INTERNAL OPPOSITION AND INCREASE THEIR POWER WITHIN THE UNION, IN CONFLICT WITH THE INTERESTS OF UMWA AND ITS MEMBERSHIP

19. Prior to defendant Boyle's presidency, UMWA conventions were held near the geographic center of the coal mining regions to minimize transportation costs of delegates and to permit maximum participation of UMW locals. Upon his taking control of the union, and to prevent militant working locals opposed to him from sending delegates to conventions, Boyle held the conventions out of the coal mining areas, in Bal Harbour, Florida and Denver, Colorado, at a tremendous increase in cost to the union. Thus, in 1960 when the convention was held in Cincinnati, Ohio, the UMWA paid a total of $89,505.20 to the Districts for delegates' transportation costs. In 1964, when the convention was held in Florida, UMWA disbursements to the

districts for transportation totaled $140,338. Transportation costs for the 1968 Denver convention totaled a record breaking $338,583. Moreover, in 1964 and 1968 these disbursements for transportation were made in cash; no adequate records were kept of disbursements, and many Boyle supporters were paid as many as two or three times. Salaries and expenses of delegates on the various convention committees were, moreover, grossly excessive. In 1968, for example, the 39-member Appeals and Grievances Committee received $40,800.00 in salaries and expenses, despite the fact that there were no appeals and grievances. In 1960, before Boyle's presidency, only $139,765 was spent for convention committee salaries and expenses. In 1964 that figure rose to $639,782.00 and in 1968 $391,200.00 of union funds were expended for this purpose. Boyle handpicks men for these plush committee assignments to reward them at union expense for their support.

20. The International officers have "loaned" excessive sums from UMWA funds to Districts 19 and 28 to assure their own political control of these districts and of the union, in conflict with the interests of the union and its membership. From January 1963 to December 1968, defendants authorized $3,702,159 to District 19 and $1,828,498 to District 28. These loans are excessive in terms of the size and needs of these districts, but they have permitted the funneling of union money under the heading of "organization expenses" to political supporters of the defendants. Loans of a similar nature and for a similar purpose have been made to other Districts.

21. By manipulating loans and convention expense money to Districts, moreover, the defendants "stacked" the 1964 and 1968 conventions in their favor. For District 17, the largest UMWA district and a self-sustaining entity,

less than $29,000 was spent for the 1968 convention, $3,397 of which came from the District's own resources. By contrast, almost $90,000 was spent in 1968 for "convention expenses", for District 19, which has about one-tenth the working membership of District 17, is not self-sustaining, and has received loans of over $3,702,000 in the past six years. Over $11,000 of this came directly from the International, the remainder from money previously "loaned" to it by the International. Looking at it from another viewpoint, the union spent over $965.00 for each delegate from District 19, but only $156.00 for each District 17 delegate. This policy of manipulating loan and expense money has benefited the defendants. The 1964 convention, for example, was completely dominated by a large group of white-hatted delegates, all from District 19 who seized the floor of the convention and the microphones to assure Boyle's complete control. Furthermore, the cost of sending delegates to the convention in Denver, Colorado and Bal Harbour, Florida, was prohibitively high for many locals and districts. The International paid their expenses – but as the figures above show – it did so selectively, to insure control of the conventions by the defendant officers. Additionally, many locals which could not afford to send delegates to the conventions were threatened with fines unless they turned their credentials over to Boyle supporters not members of those locals.

22. To assure their continued domination and control of the union, the International officers have allowed over 600 "bogey" local unions – locals with less than the 10 working members required by Article XIV of the UMWA Constitution for the maintenance of a local union—to remain in existence. The vast majority of these locals and their funds are directly controlled by the International officers and those working for them. At the 1964 and 1968

Conventions these bogey locals were used by the International officers to assure their control over the union. "Delegates" from these locals to the Convention were, in fact, men handpicked by the incumbents. Not only is the continued existence of these locals in violation of the union's Constitution, but it results in increased administrative costs to the union as well. Moreover, these locals receive over $100,000 every year in dues, and the money in their combined treasuries totals several million dollars. If these locals were, as they should be, disbanded, the members would transfer to active locals and the money in the defunct local trasuries would revert to the UMWA. Failure to disband these approximately 600 locals has given the International officers unlimited control over substantial sums of money which need not be – and, in fact, are not – reported under LMRDA. There is also no reliable internal union auditing of the money in these locals' treasuries since the International auditors work directly under and for defendant Boyle.

23. Defendants have caused and permitted the wholesale buying of political support with union funds. Principally this is done by adding men to the union payroll. Through sham designations, union money has been spent to hire Boyle campaigners and to present and promote Boyle campaign rallies. Thousands of dollars from the treasuries of the International, the Districts, the Local Unions, and the Welfare Fund have been used to pad the union payroll with "coal dust committeemen", "checkers", "organizers", and temporary staff members who are, in fact, campaigning for the incumbent President, Boyle, in his 1969 reelection bid. Since most of these men receive under $10,000 a year each, the union need not, and does not list them as employees in federal reports. Nor are they listed in the International Auditors' Reports. Moreover, union money is likewise used

to buy off dissidents. In 1966, for example, Joe Ladesic announced he would run for Secretary-Treasurer of District 5 against John Seddon, an ardent Boyle supporter. After Ladesic received backing from an overwhelming number of locals, he declined the nomination and was immediately added to the District's payroll. Since that time he has been paid well over $60,000 from the union's coffers. His decision to decline the nomination was clearly motivated by the promise of well-paid employment by the union. In District 5 and in other districts as well potential dissidents and reformers are regularly bought off by full or part-time employment on the union payroll. This practice costs UMWA hundreds of thousands of dollars, buys political support for the International officers, and is not in the interests of UMWA or its members.

24. The International officers have maintained most of the UMWA Districts in trusteeship in violation of law and at great cost to the UMWA and its membership in money and in democratic rights. They have squandered large sums of union funds in defending the Government's suit to end the trusteeships, all for their private benefit.

25. In past elections, International officers have condoned and permitted union money to be spent to deprive members of their right to an honest election under the UMWA Constitution and LMRDA. For example, in 1964 Robert Gordon, a paid International representative, was observed stuffing a ballot box for Boyle and local officers have been paid to vote members by proxy in violation of the UMWA Constitution and to alter tally sheets.

26. Defendants have used union funds in efforts to cover up and justify their misdeeds. Thus, they have expended union assets to blunt criticism of their misdeeds, by attacking safety-crusader Ralph Nader, Representative

Ken Hechler and others for their criticisms of defendants' policies, including their failure to support adequate mine safety legislation. For example, in May, 1969, Mr. Boyle, using UMWA personnel, sought to persuade Miss Josephine Roche to forge John L. Lewis' signature to a document defending the Boyle policies and attacking Mr. Nader.

E

DEFENDANTS HAVE DIVERTED UNION FUNDS AND RESOURCES TO ADVANCE THEIR 1969 EFFORTS TOWARDS REELECTION; IN CONFLICT WITH THE INTERESTS OF UMWA AND ITS MEMBERSHIP

27. In the nomination stage of the election for International officers scheduled for December 9, 1969, representatives paid by the International blocked secret ballot voting, the use of observers, the mailing in of nominations, and broke up rallies for Yablonski all to the personal benefit of defendants. Illustrative of the practice of using representatives paid by the International to deprive members of their constitutional and statutory rights to a fair election is the following incident. On June 29, 1969, a rally of Mr. Yablonski's supporters at Shenandoah, Pennsylvania, was broken up by paid appointed employees of the UMWA—International representatives Bobby Overa and John Karlavage—who paraded up and down the aisles of the meeting hall heckling the speakers. Karlavage gestured at the crowd with a clenched fist, ordering them to leave the rally. Accompanying Karlavage and Overa were 50 "pickets" paid $20 each and organized by Karlavage. Karlavage is also the President of the Shenandoah Borough Council; he had tried to convince the school board secretary to lock out the meeting. Although unsuccessful he managed to deter

the town police from giving the meeting requested police protection.

28. In connection with the December 9 election, defendant International officers further breached their fiduciary duty in violation of Section 501 of LMRDA by utilizing the UMW *Journal* as a campaign instrument for incumbent President Boyle (D.C.D.C. Civil Action No. 2413-69, affirmed Nov. 28, 1969, C.A.D.C. Nos. 23,536, 23,659).

29. UMW *Journal* staff and operating funds were, moreover, used by the International officers in 1969 to prepare a vehemently anti-Yablonski scandal sheet entitled "Election Bulletin". This "Election Bulletin" was then distributed through district offices by district personnel to UMWA members. Use of union-paid personnel and funds for such blatant partisan purposes is a clear breach of the International officers' fiduciary duty.

30. On October 27, 1969, on *Journal* stationery and at union expense, a barely disguised anti-Yablonski release, which distorted Yablonski's contentions about pensioner voting rights, was distributed to newspaper editors throughout the country. Use of union money and personnel to prepare and distribute this release and other campaign material and otherwise to promote the incumbents' reelection was in clear breach of the officers' fiduciary duty.

31. Defendant officers have utilized union funds and personnel in 1969 to publicize and promote mine safety meetings which are actually no more than campaign rallies to promote their reelection.

32. District organizations have been used in 1969 as ready-made union-paid campaign committees for the

incumbent officers. In District 30, for example, the Committee for the Re-Election of our International Officers operates out of the district headquarters in Pikeville, Kentucky. The chairman of the Committee has a salary of $11,130 as a district representative, the secretary of the committee is the secretary to the district president. In other districts as well, officers, staff members and district facilities have been utilized in a full time effort to support the incumbents' reelection campaign. These districts have mailed at district expense the "Election Bulletin" (see paragraph 29) to all union members. District 29 and other districts' funds were used directly to sponsor rallies for the incumbents and to publish rally programs. Indeed, Boyle's campaign itinerary directs District officials to set up such rallies for Boyle and visits to local mines. All of this is done at union expense.

33. Sham loans have been made to districts to finance defendants' 1969 election campaign. In February 1969, President Boyle held a series of conversations with presidents of various districts during which he told each of them to request a loan from the Washington headquarters to their districts in order to finance Boyle's reelection campaign. Subsequently, UMWA International officers have written checks to these districts for more than a million and a half dollars in loans to complete these arrangements. The funds so loaned are converted to cash by various devices in the districts and used in Boyle's campaign.

34. Union funds and promises of jobs on the union payroll have been used at defendants' direction to recruit men to support and campaign for the defendant officers. For example, Carson Hibbitts, President and Secretary-Treasurer of Districts 28 and 30 and International Executive Board Member of District 28, who holds these positions

by appointment of President Boyle, paid Albert Matney, Perry Fuller and Ray Hutchinson to attend meetings in Washington, D.C. and Pittsburgh, Pennsylvania, with money from the District 28 treasury. The delegation was told by Ray Thornbury, a paid International representative, to return to their local unions and campaign for Boyle. Additionally, Thornbury told Hutchinson that if he would support the union's "present policy" he would, in the near future, be rewarded with a job with the union. Use of union funds to recruit campaign workers is in clear violation of the incumbent officers' fiduciary duty. The same Carson Hibbitts with the knowledge and assent of defendant officers is using UMWA funds to prevent a local union at Vansant, Virginia, from having the right to elect local officers who do not favor him and Boyle.

35. In less direct ways, too, defendants have spent union funds to buy Boyle campaign workers. On October 23, 1969, for example, the International paid 500 miners $60 a piece to come to Washington to "lobby" for the safety legislation then pending in Congress. The thirty thousand dollars spent in this venture was to promote the candidacy of the incumbent officers, not to assist in the passage of the coal mine health and safety bill. At no time was the union's chief lobbyist, Joseph A. Yablonski, acting director of Labor's Non-Partisan League, told of the plan to bring the "lobbyists" to Washington, nor was he ever given an opportunity to coordinate their efforts. In fact, the bill, which passed the House on October 29 by 389-4 and the Senate by a 73-0 roll call vote on October 2, was assured of passage long before these "lobbyists" appeared in Washington. Indeed, these "lobbyists" acted contrary to the best interests of the union, deriding Congressmen who fought for this safety legislation but who had opposed Boyle's reelection. This was an obvious

junket for Boyle supporters paid out of union funds in breach of the International officers' fiduciary duty to the UMWA membership. Junkets such as this have been used frequently to enlist Boyle supporters at a cost to the union of more than $100,000 a year.

36. In an effort to prevent a fair and honest election on December 9, 1969, the defendant officers incurred additional costs in the printing of official ballots. Thus, they authorized the printing of an excessive number of ballots, including 51,000 which were not mailed to the locals but were delivered directly to defendants at the union's headquarters. Their explanation for these extra ballots – that some ballots might get lost in the mail – is not entitled to belief, in view of Secretary-Treasurer Owens' admission that he could not recall any complaints of lost ballots in the previous election for International officers. Furthermore, in an attempt to defeat the jurisdiction of the U.S. District Court (C.A. 3061-69), the defendant International officers authorized the printing of the ballots, tally and return sheets at a higher, overtime rate. The authorization of printing a grossly excessive number of ballots at a higher rate than normal was given to assist the incumbent International officers, at the expense of the union and its membership.

37. To prevent a fair election, the defendant International officers have failed to perform their statutory duties and have thus caused the union to incur substantial additional expense. Section 401(c) of LMRDA requires the union to maintain a current membership list at their principal headquarters for inspection by bona fide candidates for offices in the union. In a proceeding in the U.S. District Court (C.A. 3061-69), Secretary-Treasurer Owens admitted that he had failed to comply with the law in this

respect. Because of this failure, the union was required to spend large sums to compile a membership list on an expedited basis. Lists exist in each District office, according to Owens; had the officers requested copies of these lists in advance of the fair election lawsuit – as required by law – the cost of compiling a membership list would have been substantially lower.

F

DEFENDANT BOYLE HAS FAILED TO ACCOUNT FOR AND PAY OVER TO THE UNION OUTSIDE FUNDS RECEIVED BY VIRTUE OF HIS UMWA POSITION, IN CONFLICT WITH THE INTERESTS OF THE UMWA AND ITS MEMBERS

38. Annually, defendant Boyle and the union's General Counsel, Edward Carey, receive substantial remuneration from the National Bank of Washington for sitting on its Board of Directors. The UMWA owns 75 percent of the National Bank, and Boyle sits on the Board of Directors solely by virtue of his position in the union. In conflict with his fiduciary duties, however, he has not accounted to the union for these funds nor paid over these sums to the union treasury. Furthermore, he has made no effort to collect such sums from Carey for the union.

G

GENERAL ALLEGATIONS AND RELIEF

39. By reason of the foregoing acts and omissions of the defendants, they have violated the several duties prescribed in 29 U.S.C. 501(a), and, specifically, they have failed to hold the UMWA's money and property solely for the benefit of the UMWA and its members; they have

failed to manage, invest, and expend the UMWA's money in accordance with its Constitution and Bylaws; they have dealt with the UMWA as adverse parties or in behalf of adverse parties; they have held pecuniary or personal interests in conflict with the interests of the UMWA; and they have failed to account to the UMWA for outside funds received in connection with activities conducted by them on behalf of the UMWA. By reason of these violations of 29 U.S.C. 501 by the defendants, they have misappropriated and diverted many millions of dollars of UMWA assets to the detriment and harm of the union and its members.

40. There is no adequate remedy for the offenses complained of at law. Only judicial relief in the equitable form can provide such a remedy. It would be futile or worse to delay relief against defendants pending further efforts to obtain relief within the context of the UMWA Constitution. Indeed, the International Executive Board, in which power to entertain charges against defendant International officers is vested, is under the complete control and domination of defendant Boyle as International President.

41. On November 18, 1969, plaintiff Yablonski forwarded a letter to the individual defendants and to the members of the UMWA International Executive Board, requesting them to bring action against the individual defendants with respect to the matters asserted in paragraphs 10 through 38 of this Complaint. By letter dated November 25, 1969, defendants refused to take prompt action, despite the gravity of the misconduct involved, to obtain redress for the union and its members and to prevent further irreparable injury.

42. On November 26, 1969, the Department of Labor, as a result of its independent investigation of the conduct of defendants herein, issued a "Summary Report of Financial Investigation" of the UMWA, detailing many violations of 29 U.S.C. 501 by defendants which are encompassed in this Complaint. The Department of Labor transmitted its report to the Department of Justice for prosecution or other appropriate action.

WHEREFORE, the plaintiffs, Joseph A. Yablonski, Karl Kafton, Richard Weaver, John Wnek, Harry Elmer Brown, P.G. Gillespie, Harry Patrick, Arthur Nelms, George R. Thomas, Mike Trbovich, Joseph Daniels, and Marion Pelligrini, respectfully pray that this Court

1. Require defendants Boyle, Titler and Owens to account for all their relevant expenditures and receipts.

2. Require defendants Boyle, Titler and Owens to return all sums they misappropriated from the UMWA treasury for their own benefit.

3. Award damages as follows:

(A) To the United Mine Workers of America as against defendants Boyle, Titler and Owens, such sums as shall compensate the UMWA for damages sustained as a result of the defendants' violations of law established in this action;

(B) To the individual plaintiffs as against all defendants, such attorneys' fees, and costs and expenses incurred by plaintiffs in the prosecution of this action as the Court deems reasonable.

4. Grant such other and further relief as may be necessary and appropriate.

Joseph L. Rauh, Jr.
John Silard
Elliott C. Lichtman
Clarice R. Feldman

Rauh and Silard
1001 Connecticut Ave.,
N.W., Washington, D.C.
20036

Attorneys for Plaintiffs

[Filed October 12, 1970]

OPPOSITION TO MOTION OF MICHAEL TRBOVICH AND MINERS FOR DEMOCRACY FOR LEAVE TO INTERVENE

Comes now the Defendant, United Mine Workers of America, by its attorneys, and oppose the motion of Michael Trbovich, individually and as Chairman of and on behalf of Miners for Democracy, an unincorporated association, for leave to intervene in the above-captioned cause, and for grounds of said opposition state as follows.

1. Count I of the Complaint is an action by the Secretary of Labor to set aside a union election, pursuant to 29 U.S.C. §482. Congress has provided that the remedies therein contained are *exclusively* those of the Secretary of Labor.

2. The federal courts have uniformly held that motions for leave to intervene in suits brought by the Secretary of

Labor under 29 U.S.C. §482 to set aside union elections shall be denied.

3. Count II of the Complaint is an action brought by the Secretary of Labor pursuant to 29 U.S.C. §§436, 440, wherein it is alleged that the Defendant has failed to maintain certain records from which documents filed with the Secretary of Labor may be verified, explained or clarified. 29 U.S.C. §440 contains an *exclusive* grant to the Secretary of Labor to bring a civil action where it appears that any person has violated, or is about to violate, any provisions of the subchapter. Congress has determined that the remedies contained in said section are *exclusively* those of the Secretary of Labor, as they relate solely to records pertaining to reports filed with the Secretary of Labor.

4. Petitioner for intervention is not entitled to intervene under Rule 24 of the Federal Rules of Civil Procedure: no statute of the United States confers an unconditional, or conditional, right to intervene. To the contrary, the remedies contained in 29 U.S.C. §§482, 440, are *exclusively* that of the Secretary of Labor; applicant's interest is more than adequately represented by the United States Department of Labor and the United States Department of Justice; the disposition of the action will not impair or impede applicant's ability to protect any interest which he might have; applicant's claim and the main action have no common questions of law or fact; and, intervention would unduly delay and prejudice the adjudication of the rights of the original parties.

5. The claims of applicant are already being litigated in this and other courts. In Civil Action No. 3436-69 in the United States District Court for the District of Columbia, applicant for intervention Michael Trbovich is a plaintiff. In said civil action, paragraph numbered twenty-two

(22) of the Complaint, the plaintiffs allege the existence of six-hundred (600) "bogey" local unions with less than ten (10) working members, which, they allege, is contrary to the Constitution of the United Mine Workers of America. This case has been assigned to the Honorable Howard F. Corcoran, United States District Judge, and a pre-trial conference is set for October 14, 1970.

Blankenship, et al. v. W. A. Boyle, et al., Civil Action No. 2186-69, is a class action presently pending in the United States District Court for the District of Columbia. It has been assigned to the Honorable Gerhard A. Gesell, United States District Judge. The trial of that action has been set for January, 1971. A number of pre-trial conferences have already been conducted. One of the issues to be tried, as determined by Judge Gesell, is whether the raising of monthly pensions by the trustees of the United Mine Workers of America Welfare and Retirement Fund from one hundred fifteen dollars ($115.00) to one hundred fifty dollars ($150.00) constituted conduct violating the trustees' duty to the Fund and its beneficiaries. Plaintiffs contend there was no sound reason for increasing such pensions, but that it was only done to enhance the political election of W. A. Boyle in December, 1969. This issue was determined to be a triable issue by the Court at a pre-trial hearing held October 5, 1970.

In the United States District Court for the Western District of Pennsylvania, Civil Action File No. 70-1011, captioned *Marion Pellegrini, et al. v. Michael Budzanoski, et al.*, the International Union, United Mine Workers of America, is a defendant. This is a class action brought to compel the District 5 officers of the United Mine Workers of America to comply with the requirements of the Constitutions of the International Union, United Mine Workers of

America, and its District 5, " . . . and more specifically to *disband locals* which do not *contain* the *requisite ten working members* as provided in these constitutions." (Emphasis contained in Complaint.)

In each of these causes of action, petitioner for intervention is either a plaintiff or a member of the class for which the action is brought. Thus, the claims which applicant seeks to present in the instant case have heretofore been presented in other cases. Both of the aforesaid actions pending in the United States District Court for the District of Columbia were filed prior to the instant case. The granting of intervention would only lead to a multiplicity of cases involving the same issues.

6. Cases cited by applicant for intervention completely fail to establish any grounds for intervenion of right or permissive intervention under Rule 24 of the Federal Rules of Civil Procedure.

Attached hereto and made a part hereof is a memorandum of Points and Authorities in support of each of the above-numbered grounds of opposition to said motion to intervene.

WHEREFORE, Defendant prays that this Honorable Court deny the applicant's motion to intervene in this cause.

EDWARD L. CAREY

[Filed October 29, 1970]

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Comes now the defendant, by its attorneys, and opposes plaintiff's motion for a preliminary injunction, and for grounds thereof states as follows:

1. Defendant denies that it is not maintaining records on the matters required to be reported under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §436), which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary of Labor may be verified, explained or clarified, and checked for accuracy and completeness. Defendant avers that it maintains receipts, vouchers, worksheets and applicable resolutions as required by §206 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §436).

2. Upon being advised by agents of the Secretary of Labor that in their opinion some of the vouchers and receipts maintained by the defendant pursuant to 29 U.S.C. §436 were not sufficient for purposes of verification and clarification of information filed with the Secretary of Labor, defendant did institute new procedures, forms, verifications and requirements for all expense accounts submitted by employees of defendant.

Prior to the institution of the instant litigation, defendant did advise plaintiff's agents of its change in procedures, as aforesaid, and subsequently did request their approval in writing. No reply to the same was ever received from plaintiff.

Expense account records have, however, heretofore been kept in the manner required by §206 of the Act, 29 U.S.C. 436. The Secretary of Labor admits and concedes that the payment of a per diem rate or allowance does not require supporting receipts for lodging and meals. For more than 30 years, defendant, pursuant to its constitution and the direction of its International officers, has had a per diem rate or allowance for its employees. The same is true with respect to its subordinate districts. These payments have been made by check to employees only upon submission of a signed, detailed voucher. The practice is the same as that utilized by employees of the federal government.

An examination of these expense accounts demonstrates the reasonableness of the amounts permitted as a per diem rate or allowance.

Additionally, the expenses of each employee are contained in the semi-annual audit of all income and disbursements of the International Union, United Mine Workers of America. These exceptionally detailed audits are distributed to every district and local union of the United Mine Workers of America.

3. Defendant International Union operates through its International Office, located in Washington, D.C., and its twenty-five district offices, located throughout the United States and Canada. The district offices are administrative arms of the International Union located in coal mining areas.

Each of the districts maintains its own bank accounts and disburses its own expenses, including payrolls.

Thus, the books and records of the International Union are located not only at its principal headquarters in Washington,

D.C., but in each of the district offices located throughout the United States and Canada.

Each of the districts submits every month a balance statement showing all receipts and disbursements. It is more than obvious to any person examining these monthly statements that the disbursements of each of the districts, including payrolls, exceeds their monthly income. In order that these districts may function, it is necessary that they request loans or monies from the International headquarters in order to meet their current operating expenses. These requests are made in writing and their legitimacy is easily determinable by reference to the monthly balance statements submitted by the districts to the International Secretary-Treasurer.

The monies loaned or advanced by the International Union to these districts is accounted for in the monthly statements submitted by the districts to the International Secretary-Treasurer, and in the records kept by the districts pertaining to disbursements.

Thus, the "loans" by the International Union to the districts are supported by receipts, vouchers, worksheets, and other underlying data, which are maintained principally in the district offices.

In addition thereto, semi-annual audits are conducted by the International auditors of defendant in each of the districts except Districts 10, 14, 15, 21 and 27 where such audits are conducted annually. In District 18, a semi-annual audit is conducted by an outside certified public accounting firm. In Districts 6 and 26, a semi-annual audit is conducted by the districts' own elected auditors.

4. Following discussion with agents of the Department of Labor (as a result of its 1969 investigation which

terminated in December 1969) and the institution of this litigation, constituting the only formal notice received from the Secretary of Labor, all disbursements in the office of the International Secretary-Treasurer and in each of the districts are required to be supported by receipts, vouchers, and underlying supporting records by which such disbursements may be verified, explained or clarified and checked for accuracy and completeness. Specifically, with respect to organizing expenses, and any other disbursement made by cash, signed receipts are required to be obtained from the ultimate recipients of said disbursements.

With respect to expense vouchers, the same procedures, forms, verification and requirements initiated by the International Union in 1970 were similarly initiated and required in all districts at the same time or earlier.

5. Inasmuch as §206 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §436, is being fully and completely complied with by the defendant, as interpreted by the Secretary of Labor, no irreparable harm can occur to plaintiff.

6. The gravamen of plaintiff's motion for a preliminary injunction in Count II of the complaint is that the defendant *will* violate the provisions of §206 of the Labor-Mangement Reporting and Disclosure Act of 1959, 29 U.S.C. § 436, in the future. Inasmuch as defendant is now fully complying with said statute *as interpreted by the Secretary of Labor*, and has so fully complied since receiving information from the Secretary of Labor, there is no likelihood that plaintiff can successfully maintain its cause of action at trial.

7. The usual role of a preliminary injunction is to preserve the status quo pending the outcome of the litigation. The status quo is the last uncontested status which preceded

the pending controversy. In view of the fact that defendant has voluntarily accepted the interpretation of the Secretary of Labor regarding §206 of the said Act, 29 U.S.C. §436, defendant is complying therewith in the manner as interpreted by the Secretary of Labor, the Court should not change the status quo of the cause by the issuance of a preliminary injunction. To issue a preliminary injunction would grant to plaintiff the full measure of a relief to which he might be entitled only after a full trial of the cause.

It has been the policy of the International Union for many years that all medical bills incurred by International Officers, Representatives and members of the International Executive Board, not otherwise compensated by the group health insurance program in which they participate, are paid by defendant and specifically approved by the International Executive Board. Complete receipts for medical bills of President W. A. Boyle are available.

With respect to the affidavit of Henry A. Queen, attached to plaintiff's motion for a preliminary injunction, there are attached hereto and made a part hereof affidavits which demonstrate that the financial records in the offices of the subordinate districts of the United Mine Workers of America are sufficiently maintained to conclusively demonstrate that funds of the labor organization were not expended to promote the candidacy of any person of the election in violation of §401(g) of the said Act.

8. Attached hereto and made a part hereof are affidavits in support of defendant's opposition to plaintiff's motion for preliminary injunction. Said affidavits raise questions of fact which can only be resolved by taking testimony on the issues raised therein.

WHEREFORE, defendant prays that this Honorable Court deny plaintiff's motion for preliminary injunction.

/s/ Edward L. Carey
EDWARD L. CAREY

/s/ Harrison Combs
HARRISON COMBS

/s/ Willard P. Owens
WILLARD P. OWENS

/s/ Charles L. Widman
CHARLES L. WIDMAN

/s/ Walter E. Gillcrist
WALTER E. GILLCRIST

900 Fifteenth St., N.W.
Washington, D.C. 20005

Attorneys for Defendant

[Filed November 17, 1970]

ORDER

Upon consideration of applicant's motion to intervene and upon consideration of the opposition of the parties to said motion and upon consideration of the whole record in the case, oral argument having been heard on October 22, 1970, it is by the Court his 17th day of November, 1970,

ORDERED that the motion to intervene is DENIED.

/s/ William B. Bryant
JUDGE

[Filed November 17, 1970]

MEMORANDUM OPINION

This is an action by the Secretary of Labor under the Labor-Management Reporting and Disclosure Act, 29 U.S.C.A. §401 *et seq.*, to set aside the election of defendant's officers held on December 9, 1969, and to compel defendant to maintain certain financial records. Applicant Miners for Democracy is an organization formed in April, 1970, for the purpose of bringing about reform in the defendant union; applicant Trbovich is a member of defendant union and Chairman of Miners for Democracy. Applicants seek to intervene in the action pursuant to Fed. R. Civ. P. 24(a), intervention as of right, or, failing that, pursuant to Rule 24(b), permissive intervention.

I

As for the first cause of action, it is undisputed that the *exclusive* remedy for challenging an election already conducted is a suit by the Secretary of Labor pursuant to a complaint by a union member and a determination by the Secretary of "probable cause" to believe that a violation of the law governing elections has occurred. 29 U.S.C.A. §§482, 483; *Calhoon v. Harvey*, 379 U.S. 134 (1964); *Wirtz v. National Maritime Union of America*, 409 F.2d 1340 (2d Cir. 1969). A union member himself has standing neither to bring such a suit nor to compel the Secretary to bring one. 29 U.S.C. §§482, 483, *Wirtz v. N.M.U.A., supra; Katrinic v. Wirtz*, 62 L.R.R.M. 2557, 53 L.C. ¶ 11, 289 (D. D.C. 1966).

The legislative history of the Labor-Management Reporting and Disclosure Act makes us doubt that intervention by

a union member in a suit by the Secretary to set aside an election would be consistent with the congressional purpose. The House bill provided that complaining union members themselves, rather than the Secretary, would bring a civil action in the federal district court to enforce the election provisions. 105 *Cong. Rec.* 16,489 (1959) (remarks of Senator Goldwater). The Senate version contained substantially what was enacted, namely, that the Secretary would be the exclusive enforcer of the election provisions of the Act. *Cong. Rec., supra.* We think the fact that Congress considered two alternatives – suit by union members and suit by the Secretary – and then chose the latter alternative and labelled it "exclusive" deprives this Court of jurisdiction to permit the former alternative via the route of intervention. 29 U.S.C.A. §§482 Fed. R. Civ. P. 82.

Applicant cites us to *International Union, U.A.W., Local 283 v. Scofield*, 382 U.S. 205 (1965), as authority for allowing intervention here. *Scofield* held that the successful party in an unfair labor practice proceeding before the N.L.R.B. has a right to intervene when the court of appeals reviews the Board's order. The main rationale of the decision was the desirability of avoiding multiple appeals. If the party successful before the Board is not allowed to intervene in the court of appeals and if the court of appeals reverses the Board and returns the case to it for further proceedings, then it is probable that the party who was not allowed to intervene in the first appeal will himself have the right to bring a second appeal. In the interests of judicial efficiency and fairness to the would-be intervenor, the Supreme Court considered it highly desirable to have the court of appeals hear all the parties in one proceeding. *U.A.W. v. Scofield, supra,* at 212, 213.

The instant case, which arises under the Labor-Management Reporting and Disclosure Act (29 U.S.C.A. §§401 *et seq.*), is totally different from *Scofield*, which dealt with intervention under the National Labor Relations Act (29 U.S.C.A. §151 *et seq.*). The would-be intervenor here has not already been successful before a lower tribunal, and there is no danger of a multiplicity of appeals if intervention is denied in this case. As Professor Moore says in discussing Scofield, "Where the prevention of multiple appeals is not at stake, the rule should not apply." 3B *Moore's Federal Practice* ¶ 24.06[3.-8], at 24-132.

The only appellate court opinion squarely on point, and it is post-Scofield[1], denied intervention to a union member in an action by the Secretary to set aside an election. *Stein v. Wirtz*, 366 F.2d 188 (10th Cir.), *cert. denied* 386 U.S. 996 (1966). In *Stein*, the Secretary sued to set aside the election on the basis of a complaint by the applicant for intervention that the union had refused to permit him to be a candidate for the position of Business Manager. Two months after the filing of the action, the union and the Secretary stipulated that appellant would be eligible for candidacy in the following election, to be held eight months later. The Secretary and the union requested that the case be held in abeyance until after the elections when, assuming that the union complied fully

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[1] The *Stein* court did not discuss *Scofield*. Applicant ascribes this failure to the Tenth Circuit's ignorance of the *Scofield* opinion, and he points out that *Stein* proceeded *pro se* in the court of appeals. We think it highly unlikely that the distinguished court in *Stein* was ignorant of a major Suprme Court opinion of the preceding term. A more likely explanation for the failure to mention *Scofield* is that the court in *Stein* did not consider *Scofield* to be relevant to the problem before it.

with the terms of the stipulation, the Secretary would move to dismiss the action. In affirming the district court's denial of intervention, the court of appeals said:

> "Although appellant's subjective dissatisfaction with the Secretary's prosecution of this action is completely understandable, yet we are constrained to agree that the District Court was without jurisdiction to permit his intervention in a Title IV action." 366 F.2d at 189.

II

What we have said against permitting intervention in the first cause of action applies also to the second cause, in which the Secretary seeks an injunction to compel the defendant union to maintain financial records from which the union's annual financial reports to the Secretary may be verified. 29 U.S.C.A. §§431, 436, 440. The Secretary is the one person authorized by the statute to seek such an injunction. 29 U.S.C.A. §440.

Applicants undeniably have an interest in ensuring that union funds are spent for the sole benefit of the organization and its members. 29 U.S.C.A §501. They are already seeking to vindicate that interest in another suit in this court (Civil Action 3436-69) for an accounting, restitution and damages pursuant to 29 U.S.C.A. §§185, 501 (a) and (b). The issue in the applicants' pending suit is whether or not the union has misappropriated funds. In the instant suit the dispositive issue is quite different, namely, whether the union has failed to maintain records on the matters required to be reported to the Secretary (pursuant to 29 U.S.C.A. §431) "which will provide in

sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness." 29 U.S.C.A. § 436.

One may not intervene as a matter of right in the litigation of others unless he shows the equivalent of being legally bound by the decree in their case. Fed. R. Civ. P. 24(a)(2); *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 694 (1961); *Apache County v. United States*, 256 F.Supp. 903, 907 (D. D.C. three-judge panel 1966). Applicants have not made that showing here. As for permissive intervention, Fed. R. Civ. P. 24(b)(2), we do not perceive a sufficient nexus between applicants' interest and the Secretary's suit to justify it. At the same time, we believe applicants' own pending lawsuit to be an adequate means of asserting their rights.

The motion to intervene is denied.

/s/ William B. Bryant
JUDGE

Dated: November 17, 1970

[Filed December 15, 1970]

ANSWER AS TO COUNT I

First Defense

This Honorable Court lacks jurisdiction.

Second Defense

Count I of plaintiff's complaint fails to state a cause of action upon which relief may be granted.

Third Defense

The Secretary of Labor conducted an investigation of defendant's election of International officers of December 9, 1969, allegedly pursuant to 29 U.S.C. §482(b), without having received a complaint from a member of defendant labor organization alleging violation of any provision of 29 U.S.C. §481, including any violations of the constitution and bylaws of the defendant, pertaining to the election and removal of officers, as was required by 29 U.S.C. §481(a). As a result thereof, plaintiff was without jurisdiction to conduct said investigation or to file Count I of the instant action. This Honorable Court is without jurisdiction to hear and entertain Count I of plaintiff's complaint.

Fourth Defense

The alleged complainant, Mike Trbovich, failed to invoke and/or to exhaust the remedies available under the constitution and bylaws of defendant, and/or any of its subordinate districts, and/or a subordinate local union, as required by 29 U.S.C. §482(a). As a result thereof, plaintiff lacked jurisdiction: to entertain the alleged complaint of the said Mike Trbovich; to conduct any investigation pursuant thereto; and to file in this Court Count I of this complaint. This honorable court lacks jurisdiction to entertain and hear Count I of this complaint.

Fifth Defense

Plaintiff failed to institute Count I of this complaint within the jurisdictional time limits set forth in 29 U.S.C. 482(b). As a result, this Honorable Court lacks jurisdiction as to Count I of this complaint.

Sixth Defense

The original plaintiff, George Shultz, Secretary of Labor, failed to find probable cause to believe that a violation of 29 U.S.C. § 481 had occurred, and had not been remedied with respect to the aforesaid election, as required by 29 U.S.C. § 482(b). As a result, this Honorable Court lacks jurisdiction of Count I of this complaint.

Seventh Defense

The original plaintiff, George Shultz, Secretary of Labor, delegated the duty of finding probable cause that a violation of 29 U.S.C. § 481 had occurred with respect to the aforesaid election. The aforesaid delegation of the duty of finding probable cause was contrary to law. This Honorable Court lacks jurisdiction as to Count I of this complaint.

Eighth Defense

Plaintiff is not entitled to the relief prayed for in Count I of this complaint, as plaintiff is guilty of violating the equitable doctrine of "unclean hands".

Ninth Defense

Count I of plaintiff's complaint has abated.

Tenth Defense

The original plaintiff, George Shultz, Secretary of Labor, conducted an investigation of defendant's election of International officers of December 9, 1969, without authority and contrary to the prerequisites set forth in 29 U.S.C. § 482(a) and (b).

Eleventh Defense

In response to the allegations contained in Count I of plaintiff's complaint, defendant states as follows:

1. In response to the allegations contained in paragraph numbered I of plaintiff's complaint, defendant denies that this Honorable Court has jurisdiction.

2. In response to the allegations contained in paragraph numbered II of plaintiff's complaint, defendant denies that this Honorable Court has jurisdiction.

3. Defendant admits the allegations contained in paragraph numbered III of plaintiff's complaint.

4. The allegations contained in paragraph numbered IV of plaintiff's complaint allege conclusions of law and are not required to be answered by defendant. The same are therefore denied.

5. In response to the allegations contained in paragraph numbered V of plaintiff's complaint, defendant admits that an election of International officers was held among its members in good standing on December 9, 1969. The remaining allegations in said paragraph contain conclusions of law and are not required to be answered by defendant. With respect to these allegations, the same are denied.

6. In response to the allegations contained in paragraph numbered VI (a) of plaintiff's complaint, defendant admits that Joseph A. Yablonski, a member in good standing of defendant union, filed a protest by letter dated December 18, 1969. The remaining allegations contained in paragraph numbered VI(a) of plaintiff's complaint, contain, among other things, conclusions of law, and the

remaining portions of said paragraph numbered VI(a) are denied.

In response to the allegations contained in paragraph numbered VI(b) of plaintiff's complaint, defendant avers that the same are completely immaterial and irrelevant, and allege conclusions of law. The same are therefore denied. It is admitted that plaintiff did conduct an investigation.

In response to the allegations contained in paragraph numbered VI(c) of plaintiff's complaint, defendant is without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies the same.

7. The allegations of paragraph numbered VII of plaintiff's complaint are denied.

8. All of the allegations contained in paragraph numbered VIII of plaintiff's complaint are denied. Specifically, defendant denies all the allegations contained in paragraph numbered VIII(a), VIII(b)(i) and (ii), VIII(c)(i) and (ii) and (iii) and VIII(d).

9. The allegations contained in paragraph numbered IX of plaintiff's complaint are denied.

WHEREFORE, defendant prays that this Honorable Court enter judgment with costs in favor of defendant, and dismiss Count I of plaintiff's complaint with prejudice.

ANSWER TO COUNT II

First Defense

This Honorable Court lacks jurisdiction.

Second Defense

Count II of plaintiff's complaint fails to state a cause of action upon which relief may be granted.

Third Defense

Plaintiff is not entitled to the relief prayed for under Count II of this complaint, as plaintiff is guilty of violating the equitable doctrine of "unclean hands".

Fourth Defense

In response to the allegations contained in Count II of plaintiff's complaint, defendant states as follows.

1. The allegation contained in paragraph numbered I of Count II of plaintiff's complaint contains a conclusion of law and an allegation of jurisdiction which defendant is not required to answer. Defendant therefore denies the same.

2. Defendant denies the allegation contained in paragraph numbered II of Count II of plaintiff's complaint.

3. Defendant incorporates herein by reference its answer to paragraphs III and IV of this complaint relating to the first cause of action in response to the allegations contained in paragraph numbered III of Count II of plaintiff's complaint.

4. The allegation contained in paragraph numbered IV of Count II of plaintiff's complaint state a conclusion of law which defendant is not required to answer, and defendant therefore denies the same.

5. Defendant denies the allegations contained in paragraph numbered V of Count II of plaintiff's complaint.

Fifth Defense

Count II of plaintiff's complaint is moot.

WHEREFORE, defendant prays that this Honorable Court grant judgment with costs in favor of defendant, and dismiss Count II of plaintiff's complaint with prejudice.

In further answer to all the allegations contained in Count I and Count II of plaintiff's complaint, defendant denies each and every allegation therein contained not herein specifically admitted or otherwise answered.

/s/ Edward L. Carey
EDWARD L. CAREY

/s/ Harrison Combs
HARRISON COMBS

/s/ Wllard P. Owens
WILLARD P. OWENS

/s/ Charles L. Widman
CHARLES L. WIDMAN

/s/ Walter E. Gillcrist
WALTER E. GILLCRIST

Attorneys for Defendant

900 Fifteenth Street, N.W.
Washington, D.C. 20005
638-0530

[Filed April 27, 1971]

Appeal from the United States District Court of Columbia.

Before: WRIGHT, TAMM and ROBB, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. *See* Local Rule 13(c).

On consideration of the foregoing, and this court being in substantial agreement with the memorandum opinion filed by the District Court, *Hodgson v. United Mine Workers of America*, 51 F.R.D. 270 (1970), it is ordered and adjudged by this court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam

SUPREME COURT OF THE UNITED STATES
No. 71-119, October Term 1971

MIKE TRBOVICH,
Petitioner
v.
UNITED MINE WORKERS OF AMERICA

On petition for writ of Certiorari to the Court of Appeals for the District of Columbia Circuit.

The petition for a writ of certiorari is granted.

October 19, 1971.

ADDENDUM TO SECRETARY OF LABOR'S BRIEF IN THE COURT OF APPEALS

LAW OFFICES
RAUH AND SILARD
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036

Joseph L. Rauh, Jr.
John Silard
Elliott C. Lichtman
Daniel H. Pollitt
Harriett R. Taylor

202-737-7795

February 21, 1970

The Honorable George P. Shultz
Secretary of Labor
U.S. Department of Labor
Washington, D.C. 20210

Dear Mr. Secretary:

For over 7 months the Yablonski forces inside the United Mine Workers have been determinedly and honorably pleading for just one thing: that you do your duty as Secretary of Labor and enforce the Labor-Management Reporting and Disclosure Act of 1959 against the UMWA. For those 7 months your answer to us has always been "no". And, as we contemplate the wholly pusillanimous investigation that your Department is presently making, we fear that your answer remains "no" even today – or, what is just as bad, that you will seize upon the narrowest possible ground to upset the election.

Time and again we have asked for Labor Department action. Back in July and August we detailed over a hundred violations of LMRDA and asked you to use your admitted authority under Section 601 to investigate those violations. In your office on July 24, 1969 I told you that if the Department of Labor failed to enter the case there would be violence and more violence and this would

be on your conscience and yours alone. You turned a deaf ear and thus courted that very violence which has now occurred. On December 1 we brought the sorry record of the illegal activities of Tony Boyle and his henchmen up to date. We asked you to start an investigation at once and to station an agent at every polling place. We pointed out that "if the incumbent UMWA officers are allowed to steal this election on December 9th with the Department of Labor standing by, then everyone will know that enforcement of this law is a joke." Again you turned a deaf ear; again our predictions came true. Immediately after the election, we asked you to start an investigation and to impound the ballots and tally sheets to prevent their alteration. Again you turned a deaf ear; and now, as you can see from the Canadian Appendix, *tally sheets have been altered.* Finally, after the triple murder in January, we made one last desperate request for an investigation. Although your public relations people talked about putting 200 investigators in the field as your answer to our charges of inaction, all that they did is play "patty-cake" with the Mine Workers and even that type of investigation ended quickly. We had feared that the Labor Department would be more interested in justifying its failure to investigate prior to the election than in providing an all-out basis for a new election to bring democracy to the union. Our fears have been fully justified by the weak and inadequate nature of its investigation.

Mr. Secretary, you and your advisers are apparently the only people in the whole United States who do not know how rotten things are in the Mine Workers. Why do you refuse to see what even a blind man could not miss? Is it the influence of Mr. Usery who denounces the Yablonski group with allegations that they accepted money from

Walter Reuther and the UAW (a false statement which Joseph A. (Chip) Yablonski under oath denied as "garbage" before the Senate Labor Subcommittee)? Is it your lawyer's prattlings about "volunteerism" in the labor movement and Mr. Silberman's desire to play the wheeler-dealer role with the UMWA? Or is it your own personal desire not to take any steps of which the powerful UMWA might not approve? We do not know your motivation for inaction and apathy in the face of tyranny and violence, but there is one thing we do know: We shall keep up this fight, whatever you do, because the American people will not forever tolerate bureaucratic indifference to UMWA corruption any more than they would in the case of the Teamsters. The Yablonski supporters will *never* let you sweep this mess under the rug.

The evidence which we have presented to you over a 7 month period demonstrates beyond peradventure of doubt that the December 9th election must be set aside for each of the following four reasons:

1. Pre-election violations of law, including the massive use of union personnel and the union treasury, require a new election.

2. The voting of pensioners through unconstitutional bogey locals was obviously unlawful and requires a new election.

3. The over a hundred violations on election day, which Joseph A. (Chip) Yablonski recounted in his Affidavit, were probably matched some tenfold by those about which we have no information and these, too, require a new election.

4. The incidents of violence and the atmosphere of intimidation and fear made a fair election impossible, and require a new election.

Your investigation has failed to deal at all with points 1, 2, and 4 and has been woefully inadequate on point 3. One can only conclude from this half-hearted investigation that, while you feel the need to avoid a public outcry if you failed to set aside the election, you have decided to act on some technical ground rather than on a basis that will get to the rest of the corruption, violence and tyranny in this union. We deal below with each of the four matters you should have investigated.

1. The Department has done nothing to investigate the preelection violations of law, especially the massive use of union personnel and the union treasury. In my letter to you of January 13, 1970 we asked that the Department examine every voucher and every expenditure of the UMWA during 1969; we asked that you interrogate all UMWA personnel (in the field and in the head office) and all the additional personnel added to the payroll during 1969. You have done virtually nothing about this. Joseph A. (Chip) Yablonski outlined in his testimony before the Senate Labor Subcommittee the steps your Department would have to take to conduct a real investigation of the UMWA election: (i) lists of all persons employed at all levels of the union must be made for 1968 and 1969 and compared; only in this way can the extent to which the UMWA unlawfully padded its payrolls be made known; (ii) all expense vouchers for this period must be carefully scrutinized to ascertain how much really went to the incumbents in the form of kickbacks to finance their reelection. (Privately we have been told that your staff regards this as an impossible task at this late date. We do not think it is. Moreover, had you begun your investigation when we first requested that you do so, the job would have been far easier); (iii) detailed itemized statements of all expenditures and income for all branches of the union,

including the bogey locals, must be prepared and scrutinized with particular emphasis on money spent on postage, printing, telephone, and secretarial expenses to ascertain how much of the union's treasury was used to bankroll directly the incumbents' reelection bid; (iv) all loans to union personnel and union officers by the National Bank of Washington must be examined to determine how much of the incumbents' election expenses were financed by the union itself through the bank which it owns; (v) a list should be made of all union and union-related bank accounts in the National Bank of Washington and other banking institutions to determine how much of this money was siphoned from these accounts into the officers' campaign chest; (vi) a close study should be made of the relationship between the National Bank of Washington and other banking institutions – inter-bank loans should be bared and the union's loans to all closely held corporations and coal companies should be revealed along with the terms and amounts of these loans. Despite the fact that the transcript of this testimony was immediately made available to you, nothing was done to investigate along these lines either. The ineffectual nature of your investigation of the massive and illegal use of UMWA funds and personnel was demonstrated to us once again this week when several highly-respected miners from District 31 came into our office and told us of 13 men added to the UMWA payroll in 1969 to work for Boyle. Your people never even bothered to seek them out; they came to you of their own volition to make the facts known.

2. The Department has done nothing to investigate the illegal voting of pensioners through 600 bogus local unions. Mr. Boyle in his release of February 13 states that "Charges that there are 600 allegedly bogus locals in the UMWA were dismissed by federal district court in

Washington, D.C. during the election campaign." We do not know if this "Boyleism" is the reason for your inaction in this area, but we do know that his statement is false. Local unions, under the UMWA Constitution, are "composed of ten or more workers, skilled and unskilled, working in or around coal mines . . ." Secretary-Treasurer Owens in that pre-election case stated under oath that "there are some six hundred" local unions which do not report "because they are not workers in the mines" (Tr. 118). Far from rejecting our claim that the maintenance of these locals without workers in the mines was in violation of the UMWA Constitution, Judge Hart indicated that he was sympathetic to our assertion (Tr. 232, 236), but that since the case was being heard only a month before the scheduled election it was "too late" for him to force the union to disband all those locals and transfer their members to lawful, working locals (Tr. 232). He further indicated, "I think the Secretary of Labor can probably take care of that one" (Tr. 238). Sadly for the forces of reform in the UMWA, Judge Hart's confidence in the Secretary of Labor, like our own, was wholly misplaced.

3. With respect to the election day violations, the inadequacy of the Department's investigation can be shown in many ways, but the simplest thing is to take a look at just one of our statements of violation. Paragraph No. 61 of the election day violations covered by the Yablonski affidavit reads as follows:

> "In Canada, in UMWA Districts 18 and 26, pensioned miners voted in their first International election, though they are not qualified to vote. The margin given Boyle in District 26 (Nova Scotia), 2677 to 470, is in large

> measure due to the illegal pension vote since most of the active mines have closed down. Local officers in one active Canadian local were offered $50.00 apiece by District Representative Marsh to tabulate the unlawful pensioner vote, but they refused.

This statement was true as far as it went, but, as the Candian Appendix to this letter demonstrates, the actual facts – never investigated by you but now handed to you on a silver platter – are far worse. Among other things, that Appendix shows that tally sheets were altered and another forged after the election. We told the Labor Department in December that this was going to happen, but we were scoffed at as we had been for so many months. Now we have the sworn proof that it did happen. Yet, despite the fact that we handed your Department on a silver platter the proof of altered and forged tally sheets, your investigators have made no effort to follow-up with a general investigation of other places where the tally sheets were likewise altered or forged. Equally outrageous, your Department stood idly by while the UMWA violated its constitution and its assurances to Judge Hart in failing to print and mail out the votes of each local by January 15, 1969, thus giving additional time for manipulation and falsification.

President Boyle knew where the Yablonski forces had no watchers and how to fake the results in those places. This was not just true of Canada. Within the past few days, we received for the *first* time the UMWA "official" local-by-local tally. It is utterly appalling that your people apparently had this information in their possession since January 26, 1970, and did not make it available to us or even inform us that you had it. Mr. Secretary, are

you trying to keep us in the dark? Does it make your job easier if the party on whom you have placed the burden of proof is not given notice of what figures he must disprove?

Nonetheless, in the short time we have had to examine these "official" results, we have pinpointed their inherent lack of credibility. For example, out of all the locals listed, in only two (2) did Boyle fail to receive a vote, while Yablonski was shut-out in three hundred and three (303) locals. In more than one-third of all the locals, 455 to be exact, Mr. Yablonski received two or less votes. The Yablonski forces did not have an observer in 98% of these locals; 90% of these locals are bogus locals, which are not even recognized by the Department as "labor organizations"; and their polling places were kept a deep, dark secret as the information already furnished to your investigators reveals.

In the UMW's infamous Districts 19 and 20 Boyle supporters outdid themselves in the absence of Yablonski observers. Mr. Yablonski was denied a vote in 90 of the 127 locals that "voted". It comes as no surprise to us that District 19's "official" tally (3737 to 88) is almost identical with the initial figure posted at Boyle election headquarters in the UMW Journal office at 8:00 p.m. on the night of December 9, 1969 (3725 to 87). The Alabama (District 20) figures similarly defy imagination. For example, look at these vote totals for Boyle: 98-0, 66-0, 87-0, 64-0, 373-2, 117-0, 280-2, 156-2, 92-0, 90-0, 75-1, 352-1, 145-1. In all of District 21, where Mr. Yablonski did not have a single observer, he received 9 votes, and was defeated by an astonishing ratio of 77 to 1. And even in a spot check of our observer reports which we furnished you, we note that certain reported returns do not accord with

the returns reported to us. Thus, for example, R. C. Owens, son of Secretary-Treasurer Owens, ran the election in Local 6, District 6. There our two observer reports indicate that Boyle received only 8 votes – the official tally, however, records 67 votes for Boyle and 2 for Mr. Yablonski. Mr. Secretary, I submit these figures are patently fraudulent.

There is adequate ground for overruling the election on these election day illegalities alone despite your once-over-lightly investigation. But the fact remains that the other three grounds for setting aside the election – which your investigation has not even touched – are even more significant and more determinative. We turn now to the most determinative one of all, the violence in this union.

4. It is not possible to repeat in detail all of the charges of violence and threatened violence to Mr. Yablonski and his supporters that we made during the course of these past months. Illustrative of those assertions are the following: we told you Mr. Yablonski had been brutally attacked in Springfield, Illinois on June 28; we told you a rally of his supporters had been forcefully broken up in Shenandoah, Pennsylvania the following day; we told you that John Aiello telephoned Mr. Charles Shawkey, a Yablonski supporter, on July 19 and threatened to kill him; we told you that Mr. James Torma had been threatened by Joseph C. Morris and that Mr. Torma and his wife had been harassed by threatening phone calls. As Chip Yablonski told the Senate Subcommittee, "In every rally, in every coal mining town, from the anthracite regions of Pennsylvania to Kincaid, Illinois, that same fear prevailed. Every meeting was routinely attended by Mine Workers officials who made known their presence, who welcomed to the rally individuals they knew personally.

They all carried notebooks and tape recorders, and in some instances I was told there were even cameras present."

We warned you concerning these and similar incidents. As early as July 9th, we wrote you: "What we have set out . . . is only the part of the iceberg above the water line. The terror inside a union where a candidate for President is knocked unconscious and where a rally for that candidate is broken up by goons is even greater when it comes to the individual members." That reign of terror – abetted by bureaucratic indifference – made a fair election wholly impossible.

Some of the violence connected with this election and with efforts to reform the UMWA were unknown *even to us* until after the brutal murders of the Yablonskis encouraged some people to come forward with the facts of the terror they felt due to repeated threats to themselves and their families.

Thus *Life* magazine reported that Dr. Hawey Welles, who campaigned for Mr. Yablonski, came home one night to a ransacked home and on another occasion found that the gas tank of his airplane had been stuffed with pine cones and leaves – he would surely have been killed had he flown the plane that day.

And Mr. Harry Huge, an attorney formerly with the Washington Research Project and now at Arnold and Porter, who filed a lawsuit against the UMWA aimed at correcting abuses in the administration of the union's welfare fund, gave the following account of a series of harassing incidents to the F.B.I. at their request:

> "The law suit was filed against the U.M.W.A., the Welfare and Retirement Fund, and the National Bank of Washington on August 4, 1969.

On August 19 some kind of black grease or dust was smeared on the steering wheel of my automobile. On August 20 my wife and two-year-old son were followed home from a playground near our home by a man dressed in casual clothes with a complex camera around his neck. When my wife arrived at home, she noticed a car with Ohio license plates, cream-colored, two door, American made, and relatively new. There was a young man in casual clothes in the area in front of the house, and the car was directly in front of the house. Several minutes later the Ohio car picked up the man with the camera. The car had three people in it – a man with red hair, a woman, and another man.

"On September 6, 1969, I was leaving my house at approximately 8:30 a.m. to catch a flight to Charleston, West Virginia, when a red car with a black vinyl top, two door, late model like a Mustang or a Cougar, started up across the street and sped past me. The driver gave a motion with the flat of his hand across his neck or chest. He was a white man about thirty-five or forty years old with black hair. When I tried to start my car, it didn't turn over. The battery wasn't run down because the radio worked. I later learned from the garage that the wires to the distributor caps had been pulled loose or cut."

Violence pervaded and infected the election process from one end of the coal fields to the other. No miner

– at least anti-Boyle miner – felt safe during the election process, just as none feels safe today. Fear may be difficult to measure, but no one could reasonably contend that fear and violence may not "have affected the outcome" of this election – the statutory standard for setting aside an election under LMRDA.

Each of the four grounds we have set forth above *may have affected the outcome* of the election; put together they *obviously did affect it.* Your duty to hold another election (after further nominations) is clear.

We do not know, of course, what your decision will be. From the day Mr. Yablonski started his fight on May 29, 1969 you and your Department have treated him and his reform group – whose only crime was a fervent desire to bring democracy to the United Mine Workers and end the present reign of corruption and tyranny – as untouchables who did not deserve even the protection of the law of the land.

We know we cannot affect your decision, but we do have the right as American citizens to demand answers to our verified evidence of violations of law. *We ask that you give us an answer point by point to each illegality we have charged.* We ask you to take each such illegality separately and tell the public whether it was proven, erroneous, or not investigated. We ask for an answer (i) to each and every allegation of UMWA wrongdoing in my letters to you, (ii) to each and every allegation in the affidavits of Joseph A. ("Chip") Yablonski and Mrs. Clarice Feldman in the December 18 election challenge letters, and (iii) whether, in addition to the Mine Workers Journal, union funds and union personnel were used to further the reelection of the incumbent International officers, including the degree to which each union employee devoted his

time and the money in the International, District or local treasury to advance the candidacy of Boyle and his ticket.

Your decision on this matter will be credible only if you tell the whole story by answering each and every allegation the Yablonski forces have made - proven, erroneous, or not investigated. Then the public can decide whether you have done your full duty – not only to set aside the election but to base this action on the full record of corruption, violence and unlawful activities of the incumbent officers and their supporters.

Sincerely yours,

/s/ Joseph L. Rauh, Jr.
Joseph L. Rauh, Jr.

STATEMENT BY SECRETARY OF LABOR GEORGE P. SHULTZ ON UNITED MINE WORKERS INVESTIGATION MARCH 5, 1970

The Department of Labor has completed its investigation of the December 9, 1969, election of officers in the United Mine Workers of America and today, on behalf of the Secretary of Labor, the Justice Department filed an action under Titles II and IV of the Landrum-Griffin Act to set aside that election and to enjoin the union from inadequate recordkeeping.

The allegations are as follows:

1. The Union failed to provide adequate safeguards to insure a fair election, including permitting campaigning at the polls..

2. The Union denied candidates the right to have observers at polling places and at the count of ballots.

3. The Union failed to conduct its election in accordance with its constitution, including the failure of many local unions to elect tellers and to hold a membership meeting to set the time and place of the election.

4. The Union failed to elect its international officers by secret ballot among the members in good standing in that many members were required or permitted to cast their ballots in such a manner that the member voting could be identified with the choice expressed.

5. Members were denied the right to vote for or otherwise support the candidate or candidates of their choice without being subject to penalty, discipline, or improper interference or reprisal.

6. Members were denied the right to vote, in that elections were not conducted in some locals.

7. The Union used money received by it as dues, assessments, or similar levies, to promote the candidacy of its incumbent international officers, including but not limited to use of the union's official publication, district offices, property, and other facilities.

8. The union has failed and is still failing to maintain records and to require its subordinate Districts to maintain records on matters required to be reported under the Landrum-Griffin Act which provide in sufficient detail the necessary basic information and data from which documents filed with the Department may be verified, explained or clarified and checked for accuracy and completeness.

These allegations come from the complaint which is available to you today.

The Government has also asked the Court for a preliminary injunction to keep the United Mine Workers and its officers from spending union funds without reporting to the Department as required by Title II of the Landrum-Griffin Act.

The complaint grew out of the most widespread and painstaking investigation in the history of the Landrum-Griffin Act. The investigation involved intensive work by more than 200 investigators over the last two months.

I take this occasion to express my personal appreciation to these Labor Department employees who worked so hard and long on this assignment.

As you know, it would be improper for us to discuss the evidence supporting these allegations before that evidence is presented to a judge. Thus, we are limited in the press and other media to describe the documents filed in the court.

U. S. DEPARTMENT OF LABOR

Press Conference
by
THE HONORABLE GEORGE P. SHULTZ
Secretary of Labor

Date: March 5th, 1970
Time: 4:40 p.m.

Conference Room 102
U.S. Department of Labor
Washington, D.C.

ATTENDEES:

Laurence H. Silberman, Solicitor of Labor

SECRETARY SHULTZ: The Department of Labor has completed its investigation of the December 9, 1969 election of officers in the United Mine Workers of America. Today, on behalf of the Secretary of Labor, the Justice Department filed an action under Titles II and IV of the Landrum-Griffin Act to set aside that election and to enjoin the Union from inadequate record-keeping. The allegations are as follows:

(1) The Union failed to provide adequate safeguards to insure a fair election, including permitting campaigning at the polls;

(2) The Union denied candidates the right to have observers at polling places and at the count of ballots;

(3) The Union failed to conduct its election in accordance with its constitution, including the failure of many local unions to elect tellers and to hold a membership meeting to set the time and place of the election;

(4) The Union failed to elect its international officers by secret ballot among the members in good standing, in that many members were required or permitted to cast their ballots in such a manner that the member voting could be identified with the choice expressed;

(5) Members were denied the right to vote for or otherwise support the candidate or candidates of their choice without being subject to penalty, discipline or improper interference or reprisal;

(6) Members were denied the right to vote in that elections were not conducted in some locals;

(7) The Union used money received by it as dues, assessments, to promote the candidacy of its incumbent

international officers, including but not limited to the use of the Union's official publication, district offices, property and other facilities;

(8) The Union has failed and is still failing to maintain records and to require subordinate districts to maintain records on matters required to be recorded under the Landrum-Griffin Act in sufficient detail the necessary and basic information and data from which documents filed with the department may be verified, explained or clarified, and to check for accuracy and completeness.

These allegations come from the complaint which is available to you today. I believe that will be distributed.

The Government has also asked the court for a preliminary injunction to keep the United Mine Workers and its officers from spending Union funds without reporting to the Department as required by Title II of the Landrum-Griffin Act.

In our complaint to the court we cite the most widespread and painstaking investigation in the history of the Landrum-Griffin Act. The investigation involved intensive work by more than 200 investigators over the past two months. I take this occasion to express my personal appreciation to these Labor Department employees who worked so hard and long on this assignment.

As you know, it would be improper for me to discuss the evidence supporting these allegations, before that evidence is presented to a judge. Thus, I am limited in the press and other media to describe the documents filed in court.

The Solicitor for the Department of Labor is here, and the Assistant Secretary in charge of this investigation is

here. We will be glad to respond to your questions. I guess, unlike my usual practice of dealing with questions in a cavalier manner, since there is a law suit involved here, I will probably rely on my legal and other advisors.

QUESTION: Mr. Secretary, how soon will the court action come to a head; when will there be some action in court? Do you know?

SECRETARY SHULTZ: We'll bring in the lawyer here.

MR. SILBERMAN: The Motion for Preliminary Injunction, based on a violation of Section 206 of the Landrum-Griffin Act, a violation of the record-keeping departments, we expect to be able to come into court for argument probably within a month.

QUESTION: What about the issue of setting aside the election?

MR. SILBERMAN: We will do everything within our power to expedite that. Of course, that's up to the court. That is not in the nature of the injunction; that's the statutory scheme. But in the statutory scheme, we can assure you we will do everything in our power to bring it up as soon as possible.

QUESTION: What are the arrangements for setting a new election date and determining that whole question, Mr. Secretary?

MR. SILBERMAN: I'm sorry; I am not sure I understand your question.

QUESTION: Will it be the Department who will determine a new election and when it will be set, what conditions and so on?

MR. SILBERMAN: Under Title IV of the Landrum-Griffin Act we don't have the power to set the election. We must go to court and present the case to a judge and seek an order from him ordering a new election under the Secretary's supervision.

QUESTION: With appeals and so forth, might not that absorb an entire term of the incumbent? It has in the past, at least in two-year terms. Isn't it possible to go four years with appeals?

MR. SILBERMAN: That's up to the court, of course. All I can say is, we will assure you we will do everything we can within our power, and in the Justice Department's power, to expedite the proceedings.

QUESTION: Is it correct that if you win in the District Court, that language of Landrum-Griffin prevents a stay, or can they get a stay while they appeal?

MR. SILBERMAN: You are correct on the first instance.

QUESTION: In other words, the appeal might proceed at the same time the election is being supervised?

MR. SILBERMAN: That's correct.

QUESTION: Does the complaint mention the Yablonski murder?

MR. SILBERMAN: The complaint does not mention the Yablonski murder.

QUESTION: Mr. Secretary, are you aware of any other possible action that might be pursued by the Justice Department with respect to possible criminal charges stemming from any of this?

SECRETARY SHULTZ: No, I am not aware of any.

QUESTION: Are you referring these files over to the Justice Department for that purpose?

MR. SILBERMAN: We have worked very closely with the Justice Department throughout our investigation, in the sense that they had a parallel investigation going on during the same period that we had our investigation. Of course, it is not our charge or responsibility to investigate the murder. We did everything we could to keep that apart from the election case.

On the other hand, with Justice, there were matters where we did dovetail and we traded information back and forth.

QUESTION: So far as you know, this will not necessarily conclude the matter and the Justice Department may continue its investigation?

MR. SILBERMAN: That depends on what you mean by "this matter".

QUESTION: Mr. Secretary, do you think the action you have announced here vindicates you and your Department from the charges from some quarters a few months back, that you were "dragging your feet" on such an investigation?

SECRETARY SHULTZ: We don't think we were dragging our feet, and we are not here seeking vindication – not vindication, but we have been trying to carry out our responsibilities under the law as we have seen them. We have moved with great effort and energy on this. We were able to move as rapidly as we have because of the waiver by the United Mine Workers of the waiting period that we

would have otherwise have had to wait for. We feel we have done this properly.

We have observed the effort of the Department here, the people in the Department and the various sections. They really have pitched in and worked terrifically hard to conduct this broad and extensive investigation. It is quite a job, with a very short time to do it.

QUESTION: Mr. Secretary, a good many of these allegations were made and known prior to the election. Why couldn't they have been acted upon at that time?

MR. SILBERMAN: Well, these certain allegations were presented prior to the election, but under the scheme of the Landrum-Griffin Act, however, the power to go to court is limited to a post-election investigation by the Secretary.

Although there is general investigatory power under Section 601 that the Department could theoretically use prior to the election, it has no enforcement power at that time; thus, it has been the Department's view that Congress intended as much as possible to limit investigations of union elections to a post-election situation, since it is only at that time that we have any power to enforce a remedy. We much prefer looking at the scheme of the statute and the policy, to wait until that time.

There is also this aspect, that it is very difficult to conduct an investigation while the election is in progress. After it is over, it is a more esthetic situation to go back and re-create it. While the election is going on there is a great deal of hurly-burly and it is tough to pin it down.

QUESTION: Mr. Secretary, are you prepared now to go before the Senate Labor Subcommittee and defend

your actions, specifically your decision not to investigate?

SECRETARY SHULTZ: Well, we have to go before the Senate Labor Committee to testify and provide information and my own thoughts on this whole subject.

Of course, there will have to be certain ground rules for that, because, as I understand it, when we have a case before the courts it would not be proper to present evidence to a Congressional committee, or detail it here to you, pending trying our case before the courts. So we will try our case before the court as we are supposed to do. But subject to certain ground rules about just what will be gone into and what will not, I certainly will be glad to testify before the Committee.

QUESTION: Mr. Secretary, you said – I'm sorry. The Solicitor said a moment ago that you could not move in court under Title VI. Does this mean the report you issued just prior to the election, you won't be able to take any action in court on those facts?

SECRETARY SHULTZ: The report that we issued just prior to the election was the result of an investigation undertaken before the election started; before there was ever any election contest at all we had started that investigation, and we pursued it.

Following our policy of releasing the information when it becomes available, as a result of an investigation of that kind in which we just make the results public, we released it at the time the investigation was concluded. It was not timed particularly in terms of the election; it wasn't started because of the election. It was started beforehand. The results of it were released when the investigation was completed.

QUESTION: Is the Justice Department pursuing with that report, do you know?

SECRETARY SHULTZ: Do you want to comment on Justice's work on that earlier report?

MR. SILBERMAN: Could you repeat your question?

QUESTION: Is the Justice Department proceeding the report that you transmitted just before the election?

MR. SILBERMAN: They have pursued an investigation based on that report, yes. They haven't included it entirely, although to a certain extent our injunction, based on a violation of Section 206, draws a little bit upon that report.

QUESTION: Is it unlikely then that there would be any criminal prosecution flowing from that?

MR. SILBERMAN: I don't think I could comment on that. You would have to ask the Justice Department.

QUESTION: What about the Canadian investigation, Mr. Secretary? Is that squared away – District 26, is it?

MR. SILBERMAN: Well, we tried to investigate, as you may know, and the Canadian Government refused to allow us to go into that. So I am afraid we were stymied on that question.

QUESTION: If the court sets aside the election, will you ask for Government supervision of a new election in terms of monitoring?

MR. SILBERMAN: The remedy which the court applies in this kind of case is a new election, supervised by the Secretary of Labor.

QUESTION: So would there be Government poll-watchers or what? What does that mean?

MR. SILBERMAN: You mean how do we supervise an election?

QUESTION: Well, in a case here where you have got widespread locals.

MR. SILBERMAN: It takes a great deal of manpower.

QUESTION: Have you ever done it?

MR. SILBERMAN: Yes, we have. In an international election, the NMU, and I suppose we are going to be faced with the Retail Clerks, too.

QUESTION: The NMU is a different type—

MR. SILBERMAN: You're correct; this is going to be a difficult job for us. But we will just have to get the manpower to do it and do it right.

QUESTION: Mr. Secretary, does this action today have any effect on Tony Boyle's ability or right to take office for his new term, which I think begins in a few weeks?

MR. SILBERMAN: No, it does not. The structure of the Landrum-Griffin Act is quite clear on that. Congress debated that at some length back in 1959 and decided that the incumbent would be entitled to remain in that office until the court ordered a new election. There is nothing we could do to interfere with that scheme.

QUESTION: Mr. Solicitor, could you outline for us the various legal steps, court steps, that the Labor Department and Justice Department must follow to bring your case to a conclusion?

MR. SILBERMAN: There are two counts. Let me take the second count first. That's the motion for an injunction, preliminary injunction, restraining the inadequate record-keeping which is presently going on. That, I believe, we will get to court because it is an injunction and the courts hear injunctions quicker than other kinds of cases, relatively quickly. I think we might have a decision on the injunction itself within months.

Now, with respect to the election, although we will do our best to press the matter before the court, the Respondent is entitled to go through certain steps of discovery proceedings and the presenting of evidence at the trial, and, of course, we would present evidence, too. But the question of when that case comes to trial is largely dependent upon the court's docket.

QUESTION: Mr. Secretary, this long list of particulars that you gave us, does it describe anything more than inadvertence or carelessness?

MR. SILBERMAN: I think the complaint really has to speak for itself. As the Secretary said in the beginning, it would be improper for us to describe the nature of the allegations. I think if you read those allegations, however, you might reach a different conclusion than that inferred by your question.

QUESTION: Do you relate one to another? Is this a systematic thing? You have given us this long list, but is one related to the next? Was there a systematic attempt to deprive Mr. Yablonski of his right to be fairly elected?

MR. SILBERMAN: That would be an improper question for me to answer either way. You are characterizing the defense they may raise or the evidence they may present.

QUESTION: Will this ultimately require a jury trial?

MR. SILBERMAN: It could. Generally they are inequity proceedings, so there would not be a jury trial.

QUESTION: Mr. Secretary, how much cooperation did you get from the Union in your investigation? Was there any obstruction?

MR. SILBERMAN: I think Mr. Usery, the Assistant Secretary, would say, as I have heard him say on several occasions today, that we must state that the Union did cooperate with us in almost every respect in providing us with the matters we needed to evaluate the election.

QUESTION: Mr. Solicitor, I don't understand something that was said earlier, if the union cooperated. You had these allegations before the election, and clearly, if the allegations turn out to be true, the election then you would have to attempt to void, why not could you then investigate the law and investigate the election while it was going forward.

MR. SILBERMAN: One of the things it seems to me you must be cognizant of is that when allegations are presented to us there is no way that you can determine whether they are meritorious or not without making an investigation.

In a pre-election situation, when you make an investigation you automatically have an impact on the results of the election. Congress considered that and that is why it seems to us that they came down heavily on the side of a post-election investigation. Because when the Government goes in during the election it can't but help have an effect on the election. That is something generally the Government should really want to avoid.

QUESTION: Is there anything in – What procedures would you follow in controlling the assets of the Union in the course of this litigation?

MR. SILBERMAN: The injunction which seeks an order requiring them to abide by the record-keeping provisions of Section 206 of Title II obviously would have imposed restraints, as those record-keeping requirements do. That is the limit, however, of the remedies we conceive.

QUESTION: How do you establish the restraints and how do you monitor them?

MR. SILBERMAN: Because under Title II they must report to us how they expend their funds; under 206 they must report the vouchers, expenditures and so forth. It is that kind of thing that they haven't been reporting.

QUESTION: Would you establish the monitoring headquarters, or would it be kind of an arm's length procedure?

MR. SILBERMAN: Well, that would be up to the court to determine, as to precisely the nature of the order they would issue. I doubt, however, that the court would order a monitoring procedure.

QUESTION: Would this be a weekly or monthly report?

MR. SILBERMAN: Again, that goes to the court's order. I I would rather not comment on the exact nature of the order.

QUESTION: Do you have to establish a special task force to survey this stuff, the material that comes in?

MR. SILBERMAN: Secretary Usery has a group which is now responsible for reviewing the reports of unions, which are required to report under Title II of the Act.

QUESTION: That, I know. But I am talking about the massive nature of this particular case, with the type of –

MR. SILBERMAN: I think Mr. Usery would have to wait and see what the nature of the court order would be and what would be the best way to carry out that order.

QUESTION: How many actions have been filed since late '59?

MR. SILBERMAN: I'm sorry, but I don't have that at my fingertips. However, I am sure Mr. Usery's staff will provide that for you within a matter of 15 or 20 minutes.

SECRETARY SHULTZ: The question, are you talking about international unions versus – I think it is a relatively small number.

QUESTION: Mr. Secretary, is there anything in this proceeding that would prevent the incumbents from running a again in a new election?

MR. SILBERMAN: The answer is No.

QUESTION: Mr. Secretary, are you confident this matter would have been as fully investigated and you would have gotten this far had it not been for the murder of Joseph Yablonski?

SECRETARY SHULTZ: I am sure we would have investigated it, yes.

QUESTION: In any event?

SECRETARY SHULTZ: Yes. On the other hand, it may not have been the case where we have been able to move as far because of this exhaustion of internal remedies. I think you would have to ask the Mine Workers whether that had an impact on their willingness to waive that right.

QUESTION: Was there any special emphasis as far as you and the Department were concerned?

SECRETARY SHULTZ: We had been watching this election and concerned about this situation right along.

QUESTION: So it made no difference?

SECRETARY SHULTZ: No.

MR. SILBERMAN: You might note the Department has already investigated inernational elections very seriously.

QUESTION: Mr. Secretary, during the election campaign there were a number of seemingly well-established allegations made about union activities outside of the electoral sphere. I am wondering if your investigation went into such things as "sweetheart" contracts, the use of hospital cards for non-miners? These were several of the subjects that were discussed in the campaign.

MR. SILBERMAN: The answer is no, that wasn't within our charge.

FROM THE FLOOR: Thank you, Mr. Secretary.

(Whereupon, at 5:05 p.m, the Press Conference was concluded.)

INFORMATION ABOUT USDL'S INVESTIGATION OF UMWA DECEMBER ELECTION

NUMBER OF USDL INVESTIGATORS
(Clerical not included)

In field	217	
In Washington	13	
	230	Total professionals

NUMBER ELECTION SITES VISITED

822 locals (of 1,260 voting locals)

NUMBER OF INTERVIEWS (Estim.)

4,400

(These include: local UMWA personnel; volunteer observers; union members; UMWA personnel in 22 Districts and Washington; bank officials; transportation officials, radio, TV, newspaper and advertising persons.)

NUMBER OF MAN-HOURS (Estim.)

More than 43,000

FOR IMMEDIATE RELEASE
January 8, 1970

Following is the statement of Edward L. Carey, General Counsel, United Mine workers of America, at a news conference on January 8, 1970, at 4 p.m., in the International Executive Board Room of the United Mine Workers of America headquarters in Washington, D. C.

The International Union, United Mine Workers of America, has asked Secretary of Labor George P. Shultz to have the United States Department of Labor to conduct a thorough fact-finding investigation of the December 9 election of International officers of the UMWA. It is the desire of the Officers that the Labor Department proceed immediately to determine that the election was conducted fairly and honestly. We have offered to make available to Department investigators any and all material that the Department considers essential to the investigation.

I am also authorized to announce that the International Executive Board of the UMWA has authorized UMWA President W. A. Boyle to offer a reward of $50,000 for information leading to the arrest and conviction of the person or persons responsible for the killings of Joseph A. Yablonski and his wife and daughter.